freight for hire. Such motor vehicles as run upon rails or tracks shall not be subject to the provisions of this Act.

NINETEENTH DAY.

Senate Chamber,
Austin, Texas,
Tuesday, Sept. 25, 1917.

The Senate met at 9:30 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

Alderdice.	Hopkins.
Bailey.	Hudspeth.
Bee.	Johnson of Hall.
Buchanan of Bell.	Johnston of Harris.
Buchanan of Scurry.	Lattimore.
Caldwell.	McNealus.
Clark.	Page.
Collins.	Parr.
Dayton.	Robbins.
Dean.	Smith.
Decherd.	Strickland.
Floyd.	Suiter.
Gibson.	Westbrook.
Harley.	Woodward.
Henderson.	

Absent.

Hall.	McCollum.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Petitions and Memorials.

See Appendix.

Committee Reports.

See Appendix.

Bills and Resolutions.

By Senator McNealus:

S. B. No. 38, A bill to be entitled "An Act to amend Article 598 of Chapter 8, Title XI of the Revised Penal Code of the State of Texas, and Article 5716, Title 88 of the Revised Statute of the State of Texas, so as to permit the sale in any county or subdivision thereof, or any city or town in which the sale of intoxicating liquor has been prohibited, of wines for sacramental purposes and of alcoholic stimulants for medicinal purposes, and so as to permit the sale of ethel alcohol by wholesale druggists to retail druggists; and declaring an emergency."

Read first time and referred to the Committee on Criminal Jurisprudence.

By Senator McNealus:

S. B. No. 39, A bill to be entitled, "An Act to amend Sections 6 and 7 of Chapter 31, of the Acts of the First Called Session of the Thirty-third Legislature of the State of Texas, which Act was entitled 'Intoxicating liquor—Prohibiting the Shipment of same into prohibition territories,' prohibiting any person, firm or corporation from soliciting or taking orders in any county, justice precinct, town, city or other subdivision of a county where the qualified voters thereof have by a majority vote prohibited the sale of intoxicating liquors; providing, however, that nothing in said Act shall make it unlawful for any person, firm or corporation licensed under the laws of the State of Texas to sell ethyl alcohol to the owner, proprietor, agent or employe of retail drug stores, to take orders for ethyl alcohol when such sales are made in compliance with the laws of this State and providing that it shall not be unlawful for intoxicating liquors to be received for the use of his, their or its business only, by any dug stores in which drugs are propounded and employing a registered pharamicst, or by any educational or eleemosynary institution, or by any public or private hospital, or by any manufacturer or the owner or proprietor of any manufacturing establishment, or by any person, firm or corporation engaged in the wholesale drug business; and declaring an emergency."

Read first time and referred to the Committee on Criminal Jurisprudence.

By Senator McNealus:

S. B. No. 40, A bill to be entitled "An Act to amend Chapter 6 of Title 126 of the Revised Statutes of the State of Texas, which chapter provides for a tax on intoxicating

liquors in local option territory, so as to add thereto Article 7475a, which added article provides that the preceding articles of said chapter shall not apply to the sales of ethyl alcohol in quantities of one gallon or more by persons, firms or corporations engaged in the wholesale drug business to any owner, proprietor, agent or employe or of any retail drug store in which drugs are compounded and employing a registered pharmacist where such sales are made for the purpose of being used in said retail drug business, and levying a tax and providing for the procuring of a license by such person, firm or corporation engaged in the wholesale drug business and located within any territory where local option is in force, before making such sales, and providing regulations for the issuance of such licenses; and declaring an emergency."

Read first time and referred to the Committee on Criminal Jurisprudence.

Simple Resolution No. 23.

Whereas, Judge James I. Perkins of Cherokee County, a former member of this body is now in the city, be it resolved that he be invited to address the Senate and be extended the privileges of the floor.

STRICKLAND.

The resolution was read and adopted.

Judge Perkins being conducted to the President's stand, addressed the Senate briefly.

Messages from the House.

Hall of the House of Representatives,
Austin, Texas, Sept. 25, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the folowing bills:

H. B. No. 50, A bill to be entitled "An Act to repeal Chapter 29 of the Acts of the Regular Session of the Thirty-fifth Legislature, which chapter is 'An Act to establish a branch of the Agricultural and Mechanical College of Texas in that portion of western Texas, lying west of the ninety-eighth meridian and north of of the 29th parallel; providing for the location of said college; its government and the control of its finances; defining its leading objects and prescribing generally the nature and scope of instruction to be given; providing for the instruction of all students of such college in military science and for the military discipline of all students; conferring upon the Board of Directors of said college the right of eminent domain; making necessary appropriations for the location, establishment and maintenance of said college; and declaring an emergency'; providing that all acts done, or contracts or agreements that may have been entered into under the provisions of such Chapter 29 by the State of Texas or by any of its officers, agents or employes, are each and all hereby canceled and annulled; and all appropriations made for the construction and equipment of such college are repealed; and declaring an emergency."

H. B. No. 51, A bill to be entitled "An Act to repeal Chapter 204 of the Acts of the Regular Session of the Thirty-fifth Legislature, which chapter is, 'An Act to establish a Junior Agricultural College east of the ninety-sixth meridian and north of the thirty-first parallel, and to place the government and direction of said institution under the governing board of the Agricultural and Mechanical College of Texas, and making an appropriation for said Junior College, and declaring an emergency'; providing that all acts done, contracts or agreements that may have been entered into, under the provisions of such Chapter 204, by the State of Texas, or by any of its officers, agents or employes are each and all hereby annulled, and all appropriations canceled; and declaring an emergency."

Respectfully,
BOB BARKER,
Chief Clerk House of Representatives

Hall of the House of Representatives.
Austin, Texas, Sept. 25, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 1, requesting the Texas delegation in Congress to

work for a bill to appropriate "the cotton tax fund" to the Confederate soldiers, sailors and their widows.

S. C. R. No. 3, relating to the Enrolled Bills of the House and Senate.

Respectfully,
BOB BARKER,
Chief Clerk House of Representatives

Bills Read and Referred.

The Chair, President Pro Tem. Dean, referred after their captions had been read, the following House bills:

H. B. No. 50, referred to the Committee on Educational Affairs.

H. B. No. 51, referred to the Committee on Educational Affairs.

The Hour of the Court Postponed.

Senator Strickland made the point of order that the hour for the convening of the Court of Impeachment had arrived.

The point of order was sustained.

On motion of Senator Gibson the hour for the convening of the Court was postponed for twenty minutes.

Messages from the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with several messages from the Governor.

The Chair directed the Secretary to read the messages, which were as follows:

Governor's Office,
Austin, Texas, Sept. 25, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subject:

Enactment of an Act to amend Chapter 35 of the General Laws of the First Called Session of the Thirty-fourth Legislature, under the head of "General Land Office: Providing that the new General Land Office building be used for the accommodation of the Department of Insurance and Banking, the Department of Agriculture, and such other departments of the State Government as may be prescribed by law," so as to read, "The Department of Agriculture and such other departments of the State Government as may be designated by the Governor and the Superintendent of Public Buildings and Grounds."

It is believed that other departments can be moved to the General Land Office building with greater convenience to the public than the Department of Insurance and Banking, which department, it is considered also, should remain nearer to the Attorney General's Office, for the sake of convenience in carrying on the work of the Commissioner of Insurance and Banking.

Respectfully,
W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 24, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subjects:

1. Enactment of a law to repeal all special road laws heretofore enacted for Titus County, Texas, and to specifically repeal Chapter 106 of Special Laws of the Regular Session of the Thirty-third Legislature, 1913.

2. Enactment of a law to amend Section 17, Chapter 83, approved March 16, 1917, relating to the prospecting and development of minerals in the public lands so as to appropriate to the general revenue the proceeds arising from royalties from oil and gas developed in areas other than lands belonging to the Public Free School Fund, the University Fund and the several asylum funds, instead of appropriating said proceeds to the Game, Fish and Oyster Fund.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 25, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subject:

Enactment of a law to permit wholesale druggists in local option territory to sell alcohol in quantities of more than one gallon to re-

tail druggists for medicinal purposes.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 24, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subjects:

1. Enactment of a law to fix a schedule of salaries for county superintendents.

2. Enactment of a law providing for destruction of Russian thistle, and to prevent its growth and spread.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Senate Bill No. 11—House Amendments Concurred in.

Senator Dayton called up for consideration of House amendments to:

S. B. No. 11, A bill to be entitled "An Act to regulate the business of emigrant agents, and declaring an emergency."

The following House amendments were laid before the Senate:

(1) Amend Senate Bill No. 11 by striking out the words, "two hundred and fifty ($250) dollars for each and all of said counties," and inserting the words, "fifty ($50) dollars for each county in which an office is to be maintained by said agent."

(2) Amend Senate Bill No. 11, Section 6, page 3, line 28, by adding the following words: "Provided nothing in this act shall be construed to apply to municipal employment bureaus or employment agencies operated purely for charitable purposes."

(3) Amend Senate Bill No. 11, Section 2, by inserting after the word "person" and before the word "engaged" the following words: "Who for compensation or fees paid or to be paid directly or indirectly by those employed or solicited to emigrate is."

(4) Amend the caption of Senate Bill No. 11 by inserting after the words "and prescribing the punishment therefor," the words, "providing that municipal employment bureaus and employment agencies operated purely for charitable purposes shall be exempt from the provisions of this Act."

On motion of Senator Dayton the the amendments were concurred in by the Senate.

Bills Signed.

The Chair (President Pro Tem. Dean) gave notice of signing and did sign, in the presence of the Senate the following bills:

H. B. No. 27, A bill to be entitled "An Act creating the Ben Wheeler Independent School District in Van Zandt County, Texas, defining its metes and bounds, providing for a board of trustees therefor, vesting it with the rights and duties of districts incorporated for school purposes only under the general laws, and declaring an emergency."

H. B. No. 16, A bill to be entitled "An Act to amend Sections 2 and 14 of the Special Road Laws of Coleman County, Texas, etc."

H. B. No. 21, A bill to be entitled "An Act to amend Chapter 104 of the Acts of the Regular Session of the Thirty-fifth Legislature of the State of Texas, entitled 'An Act to create a more efficient road system for Newton County, Texas,' etc., and declaring an emergency."

H. B. No. 5, A bill to be entitled "An Act to amend Chapter 105 of the Acts of the Regular Session of the Twenty-ninth Legislature, which Chapter is entitled 'An Act to prevent the diversion of electric current, water or gas, from passing through any meter, and prevent any electric, water or gas meter by any manner or means from registering the full amount of current of electricity, water or gas, that passes through it, and to prevent the diversion from any wire of electric current, water or gas, of any person, corporation, or company engaged in the manufacture or distribution of electricity, water or gas, for lighting, power or other purposes; and to prevent the retaining of, or refusing to deliver any meters, lamps or other appliances which may have been loaned or supplied for furnishing electricity, water or gas; and to prescribe a penalty for the violation thereof'; so amending said chapter as to make

the presence on or about such meters, wires and pipes, of any device for the diversion of electric current, water or gas, or for the prevention of the proper action, or registration of the meter prima facie evidence of intention on the part of the user to defraud, within the scope of such chapter and so amending said Act as to effect more fully the purpose thereof, and to repeal all laws in conflict herewith."

H. B. No. 18, A bill to be entitled "An Act to amend Sections 1, 2, and 6, Chapter 4, of the Special Laws of the Regular Session of the Thirty-fifth Legislature, 1917, entitled 'An Act to create a more efficient road law for Llano County, Texas,' etc., and declaring an emergency."

Senate Bill No. 7—House Amendments Concurred In.

Senator Page called up for consideration of House amendments to:

S. B. No. 7, A bill to be entitled "An Act to prevent the introduction into the State of Texas of the destructive cotton pest, Pectinophera gossipiella Saund., hereinafter referred to as the pink boll worm, and to control and eradicate such insect pest in the event its presence in this State is discovered; creating a zone along the southern and southwestern boundary of the State from which cotton and cotton products may not be transported; providing for the inspection of fields of cotton and for the inspection and general control of cotton produced in an inspection zone; and to provide for the quarantine and control of any territory within which the pink boll worm may be found; providing for an appropriation, and creating an emergency."

The following House amendments were laid before the Senate:

Section 1. There is hereby created a zone along the boundary between the State of Texas and the Republic of Mexico, comprising the counties of El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo and Cameron, for the purpose of aiding in the prevention of the introduction into this State of the cotton pest, Pectinophera gossipiella Saund., hereinafter referred to as the pink boll worm.

Sec. 2. Whenever the Secretary of Agriculture of the United States shall certify to the Governor of this State that the pink boll worm in any of its stages of development, including the egg, larva, pupa and adult stages, has been discovered in Mexico within fifty miles of the Texas border, it shall be the duty of the Governor to proclaim that part of the zone established by Section 1 adjacent to the location of the pest and for a distance of not less than fifty miles in such zone along the border of the State a closed zone from which it shall be unlawful to transport any cotton or cotton products to any part of the State from such closed zone embraced in the proclamation of the Governor; provided, however, that it shall be the duty of the Commissioner of Agriculture of Texas to make a thorough inspection of the cotton fields and cotton and cotton products in such closed zone, and if such investigation determines the fact that there is no pink boll worm in such closed zone and no pink boll worm in any of its stages of development in any territory within the State of Texas or without the United States, and adjacent to said zone and not less than fifty miles from such closed zone, then in such event after such finding of fact by him he shall certify such finding to the Governor, who may by proclamation declare it lawful for cotton grown in such closed zone and its products to be transported from such closed zone under such conditions as may be deemed essential to the protection of the cotton industry of the State.

Sec. 3. At any time the Secretary of Agriculture of the United States shall report the presence of pink boll worm within twenty-five miles of the Texas border, the Governor shall cause a special examination to be made by the Commissioner of Agriculture of this State of the danger of infestation of Texas fields by the pest, and if such report, in the judgment of the Governor, shall justify such action, he shall declare the growing of cotton in the said zone for such distance adjacent to the known location of the pink boll worm as may be deemed necessary to assure the prevention of the introduction of the pest, a public menace, and thereafter it shall be unlawful for any person or persons to grow

cotton in such territory so set apart, or to transport any cotton, or its products from such zone to any other point in Texas.

Sec. 4. It shall be the duty of the Commissioner of Agriculture of this State to maintain a rigid inspection of the cotton fields and of the cotton and cotton products in the zone provided for in Section 1 of this Act, in such manner as to determine the presence of pink boll worm in all stages of development, and whenever the pest is discovered in such zone the Commissioner shall certify that fact to the Governor of the State, who shall immediately proclaim a quarantine of such territory in the zone, and such territory adjacent thereto, as may be deemed necessary to prevent further advance of the pest into Texas; and thereafter it shall be unlawful for any person or persons to transport cotton, or cotton products of any kind from any territory within the counties in such zone, or the territory adjacent thereto embraced in such quarantine proclamation, through or to any other part of the State of Texas, or transport any car or vehicle or freight or other article contaminated with cotton seed, or other products of cotton capable of carrying the pink boll worm in any of its stages from the counties embraced in such zone through or to any other point in Texas, unless and until it shall have been freed from cotton seed or other cotton products and shall have been properly fumigated or disinfected in such manner as the Commissioner of Agriculture of this State shall direct. Any and all such fumigation or disinfection and the cost of such protective measures against the spread of the pink boll worm shall be paid by the owners of the cotton or cotton products, or of the car, vehicle, freight or other article used for such transportation of cotton or its products.

Sec. 5. If the cotton pest known as the pink boll worm in any of its different stages shall be found in the State, and outside the zone provided for in this Act, the Commissioner of Agriculture of this State shall immediately certify that fact to the Governor, who shall proclaim a special zone or quarantine district surrounding the known location of the pest to such extent as may be determined sufficient to prevent the spread of the pink boll worm, and it shall be unlawful for any person or persons to ship any cotton or cotton products of any kind from such quarantined district or transport any car or vehicle, or freight, or any other article contaminated with cotton seed, or other cotton product capable of carrying the pink boll worm in any of its stages from the quarantined area through, or to any other point in this State, unless and until it shall have been freed from cotton seed or other cotton product, and shall have been fumigated or disinfected in such manner as the Commissioner of Agriculture of this State shall direct. Any and all such fumigation or disinfection and cost of such protective measures against the spread of the pink boll worm shall be paid by the owners of the cotton or its products or by the owners of the car, vehicle or freight or other article employed in its transportation.

Sec. 6. If it shall become necessary in the judgment of the Commissioner of Agriculture of this State to the protection of the cotton industry of Texas, that the Commissioner shall destroy cotton and cotton plants in any field or fields in which the pink boll worm may have been discovered, or in any fields in the vicinity of such infested fields, he shall report such condition and certify a recommendation to that effect to the Governor, who shall thereupon declare such cotton or fields of cotton a public menace, and upon the promulgation of such proclamation the Commissioner of Agriculture shall be empowered to exercise all authority requisite to the complete destruction of such cotton or cotton plants in such field or fields, and it shall be his duty to effect such destruction in such manner as may be deemed essential to the eradication of the pest and to the adequate protection of the cotton industry of this State.

Sec. 7. If it shall be deemed necessary by the Commissioner of Agriculture to the protection of the cotton industry of Texas that the growing of cotton in any quarantined district known to be infested with the pink boll worm, or in any part of such quarantined district, constitutes a certain danger to the cotton industry of the State he shall certify such conclusion to the Governor, who shall thereupon proclaim the growing of

cotton in such district a public menace, and thereafter it shall be unlawful to grow cotton in such district for such term of years as the proclamation may designate. The provisions of neither of the sections of this Act shall be held to modify the provisions, restrictions and requirements of any other section.

Sec. 8. For the purpose of complying with the requirements of this Act in preventing the introduction of the pink boll worm into Texas, or to eradicate the pest if its presence shall be discovered in the State, the Commissioner of Agriculture and his authorized agents shall have power to enter into any field or fields of cotton or upon any premises in which cotton or its products may be stored or held, and may examine any products or container of cotton or its products, or thing or substance liable to be infested with the pink boll worm in any of the stages of its development. For the purpose of effecting the provisions of this Act, the Commissioner of Agriculture may employ and prescribe the duties of such inspectors as may be necessary and fix their compensation.

Sec. 9. It shall be the duty of the Commissioner of Agriculture of this State to co-operate with the Secretary of Agriculture of the United States in any measures authorized and to be undertaken by the Federal government in preventing the introduction of the pink boll worm into the United States through the State of Texas.

Sec. 10. It shall be the duty of any person or persons upon whose premises any pink boll worm shall appear to report the presence of such cotton pest to the Commissioner of Agriculture of this State, and any failure, knowingly, on the part of any such person or persons to make such report promptly shall, upon conviction, subject such person or persons to a fine of not less than one hundred ($100) dollars and not more than one thousand ($1000) dollars for each offense. And any person or persons who may know of the presence of the pink boll worm in any locality in the State, and who shall fail to report the location of such pest to the Commissioner of Agriculture shall, upon conviction, be subject to a like fine.

Sec. 11. Any person or persons who may transport any cotton or cotton products by any means from any territory in this State which has been quarantined and placed under restrictions by proclamation of the Governor of the State in accordance with the authority conferred by the conditions of this Act, to any part of the State in violation of this Act or of either of the proclamations and restrictions authorized by this Act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than five hundred ($500) dollars and not more than five thousand ($5000) dollars, and each transaction or each product so shipped or transported shall constitute a separate offense.

Sec. 12. To defray the expense of this Act for the two fiscal years ending August 31, 1918, and August 31, 1919, there is hereby appropriated out of any funds of the State Treasury, not otherwise appropriated, the sum of twenty thousand ($20,000) dollars, or so much thereof as may be necessary to maintain adequate inspection of the territory designated in this Act, and to investigate the probable presence of the pink boll worm in the State, and to establish and maintain adequate quarantine of any infested area that may be discovered within the State. All expense incurred under this Act in the enforcement of its provisions shall be paid as are other expenses of a similar character incurred by the Department of Agriculture of the State.

Sec. 13. The provisions of the several sections of this Act shall be construed as cumulative in effect and shall not be held to modify the provisions, restrictions or requirements of other sections; and if any provisions of this Act shall be declared by proper judicial action to be unconstitutional, that fact shall not operate to invalidate other provisions.

Sec. 14. The near approach of the close of this Special Session, and the seriousness of the meance to the cotton industry of Texas, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days, should be, and the same is hereby suspended, and that this Act take effect from and after its passage, and it is so enacted.

(2) Amend the amendment to Senate Bill No. 7, page 2, Section 3, line 24, by adding at the end of line 24 the following: Change the period after the word "Texas" to a comma and add the

words, "so long as such condition of menace to the cotton industry shall be deemed to exist."

(3) Amend the amendment to Senate Bill No. 7, page 4, line 3, by adding at the end of the section (6) the following: "In the event it shall be found necessary in the accomplishment of the purposes of this Act to destroy any field or fields of cotton, the county judge of the county in which such field or fields may be located shall immediately appoint three disiniterested citizens whose duty it shall be carefully to examine such fields or field of cotton, and report their conclusions of the value of the cotton in such field or fields to be destroyed to the county judge. Before entering upon the duties required of them, such citizens shall take an oath before some officer legally qualified to administer oaths that they will discharge impartially the duties herein provided for. When the report of the said three citizens shall be filed with the county judge it shall be his duty to transmit the same with his endorsement to the Commissioner of Agriculture of the State, who shall certify to the fact of such field or fields of cotton having been destroyed, in pursuance of the provisions of this Act, and he shall then file such report and certificate with the State Comptroller, who shall issue his warrant upon the State Treasurer for such sum as may be declared just and due in such report, which sum shall be paid from any funds in the State Treasury not otherwise appropriated."

(4) Amend the amendment to Senate Bill No. 7, page 4, Section 7, line 13, by striking out all after the word "designate," in lines 13, 14 and 15, to the end of the section.

(5) Amend the amendment to Senate Bill No. 7, page 4, Section 7, line 13, by adding after the word "designate" a comma in place of the period, and adding the following: "or so long as such condition of menace to the cotton industry shall be deemed to exist."

(6) Amend Senate Bill No. 7 by striking out all before the enacting clause and substituting the following:

"A bill to be entitled 'An Act to prevent the introduction into the State of Texas of the destructive cotton pest, Pectinophera gossipiella Saund., hereinafter referred to as the pink boll worm, and to control and eradicate such insect pest in the event its presence in this State is discovered, creating a zone along the boundary between the State of Texas and the Republic of Mexico, providing for the inspection of fields of cotton and for the inspection and general control of cotton and cotton products produced in such zone; providing for the quarantine of any territory in such zone whenever the pink boll worm in any of its stages shall be discovered within such zone or adjacent thereto in the Republic of Mexico; providing for the quarantine and control of any territory within the State in which the pink boll worm may be found, and for the eradication of the pest, and for compensation for cotton or fields of cotton that may be destroyed under the provisions of the Act; providing for an appropriation, and creating an emergency.' "

(7) Amend the amendment to Section 6 of Senate Bill No. 7, page 134 of the House Journal, by adding after the word "appropriated" in the fourth line from the bottom of the second column, the following:

"Provided, if any person whose cotton or field of cotton has been destroyed according to the provisions of this Act is dissatisfied with the estimate of damage assessed by the said three citizens he shall have the right of appeal to any court of competent jurisdiction."

(8) Amend the amendment to Senate Bill No. 7 (which amendment is House Bill No. 1, and all amendments refer to page, section and line of House Bill No. 1) by adding, page 1, Section 1, line 26, after the word "Cameron," in line 26, the following: "and that part of Dimmit County south of a line drawn diagonally across the county from the northwest corner of the county where it joins Zavala and Maverick counties, to the southeast corner of the said Dimmit County on the line of La Salle County."

(9) Amend Senate Bill No. 7 by adding thereto, immediately following Section 11, Section 11a, as follows:

Section 11a. Before any quarantine shall be declared or established embracing any section or territory within this State pursuant to any of the provisions of this Act, the Commissioner of Agriculture of this State shall cause to be made a thor-

ough examination of the territory and premises believed to be infected by a competent and experienced entomologist, who shall, after going upon the said premises, and after making the said examination in person, report the result thereof to the Commissioner of Agriculture; should said report disclose the fact that the pink boll worm in any of its stages exists within the territory under investigation, said person who made the examination shall make a statement in writing setting forth, among other things, the following facts:

1. The date when such examination was made.

2. The name or names of the person or persons who were present when such examination was made.

3. The locality where said pink boll worm was found.

4. The name or names of the owners of the premises.

5. The extent of the infection, and the number and description of the different localities infected.

6. The necessary steps to be taken in dealing with the said infections and the proper safeguards to be employed.

7. Any other information deemed necessary to be given preparatory to dealing with said infection.

Said statement shall be duly verified by the oath of the person making the said examination, the same shall be filed and preserved in the office of the Commissioner of Agriculture, and shall be open to the inspection of the public.

(10) Amend S. B. No. 7, Section 12, by striking out the figures "20,000" and insert in lieu thereof the figures "10,000."

The amendments were read and on motion of Senator Page the Senate concurred in the same by the following vote:

Yeas—25.

Alderdice.	Harley.
Bailey.	Johnson of Hall.
Bee.	Johnston of Harris.
Buchanan of Bell.	Lattimore.
Buchanan of Scurry.	Page.
Caldwell.	Parr.
Collins.	Robbins.
Clark.	Smith.
Dayton.	Strickland.
Dean.	Suiter.
Decherd.	Westbrook.
Floyd.	Woodward.
Gibson.	

Nays—1.

Hudspeth.

Absent.

Hall.	McCollum.
Henderson.	McNealus.
Hopkins.	

In the Senate.

(President Pro Tem. Dean in the chair.)

Recess.

At 12:10 o'clock p. m. the Senate on motion of Senator Clark, recessed until 1:30 o'clock today.

After Recess.

(Afternoon Session.)

The Senate was called to order by President Pro Tem. Dean, at 1:30 o'clock p. m.

The Senate as Court of Impeachment.

PROCEEDINGS.

Tuesday, September 25, 1917.

Morning Session.

Senate Chamber, Austin, Texas.

Hon. W. L. Dean, President Pro Tempore, Presiding.

(Pursuant to adjournment, the Senate, sitting as a High Court of Impeachment, convened at 10:45 o'clock a. m., the time for convening having been extended on motion duly made, to await the arrival of Senator Hudspeth, who had been out of the city.)

The Chair: The hour has now arrived for the convening of the Court of Impeachment. Let the Sergeant-at-Arms proclaim the convening of the Court. All except those entitled to its privileges will retire from the Chamber.

Sergeant-at-Arms (at door of the Senate): Oyez! Oyez! Oyez! The Senate, sitting as a High Court of Impeachment, is now in session.

Senator McNealus: Mr. President, I ask the unanimous consent of the Senate to waive that procedure long enough to send up these bills. I just

got them this moment. I feel they will do that.

The Chair: I think we will have to resolve ourselves back into the Senate, as the Court has convened.

Senator McNealus: Well, I desire to do that, then, because I am anxious to get some action on these bills; they are very important.

The Chair: Are you ready with the bills?

Senator McNealus: Yes, sir.

Senator Bee: Mr. President, I move that the High Court of Impeachment recess temporarily.

The Chair: The Senator from Bexar moves that the High Court of Impeachment recess temporarily. Those favoring the motion say "aye"; those opposed, "no." The motion prevails.

(Thereupon legislative matters were taken up by the Senate, and at 11:10 o'clock a. m. the Senate resolved itself into a High Court of Impeachment, and the following proceedings were had, to wit:

Senator Bee: Mr. President, I move that the Senate now resolve itself into a High Court of Impeachment.

The Chair: The Senator from Bexar moves that the Senate now resolve itself into a High Court of Impeachment. Those favoring the motion will say "aye"; those opposed, "no." The motion prevails. The Court will come to order.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: Before the report is read, I would like to ask the Senator from Tarrant—

The Chair: Does the Senator from Tarrant yield?

Senator Lattimore: I yield.

Senator Bee: The hour was set for 12 o'clock for pronouncing judgment, and several Senators desire to be heard. I want to suggest that it might be possible to reach an agreement by unanimous consent for a division of time between the proponents for the majority report and the proponents for the minority report. It is now ten minutes after 11, and it is fifty minutes before the judgment will be pronounced, unless the Court would be willing to extend it until half past 12.

Senator Hudspeth: Mr. President, why not pronounce it at 2 o'clock?

Senator Bee: Or adopt it and pronounce the judgment at 2 o'clock, as suggested by the Senator from El Paso.

Senator Bailey: Mr. President, does the Senator from Bexar yield?

Senator Bee: I yield.

Senator Bailey: If we finish—if we find we cannot finish by 12 noon, then we can by motion postpone it until 2, 3 or 4 o'clock.

Senator Bee: I am frank to say I want to be heard on this question, I think it is a matter of considerable moment, and by agreement with the Senator from DeWitt and other Senators, it was my purpose to close the debate in favor of the minority report. I would not like to be in the position of closing the debate just at the time for the judgment to be pronounced.

Senator Hudspeth: Does the Senator from Bexar yield?

Senator Bee: I yield to the Senator from El Paso.

Senator Hudspeth: It is now only forty or fifty minutes to the time for pronouncing judgment, and I don't think anyone can expect to discuss the question as it should be discussed in fifty minutes.

Senator Bee: That is just the point I was making (to the Senator from Tarrant): Couldn't we reach an agreement?

Senator Lattimore: I don't believe, Mr. President, that there could be any serious objection from a legal standpoint. I am sure there could be no objection except from that standpoint, to extend the time.

Senator Bee: If the Senator from Tarrant will permit, the Senator from Jefferson, I think, desires to be heard, the Senator from Wood desires to be heard, the Senator from DeWitt desires to be heard, the Senator from El Paso, I think, and the Senator from Tarrant—I don't know—and myself. I don't know, does the Senator from Cooke desire to be heard?

Senator Lattimore: Of course, Mr. President, if the Senator from Bexar will permit, the Senate did fix the hour of noon today as the hour for entering the judgment. Of course, I suppose, that under one of the special rules that we adopted, which gives the Senate the right and power— I mean give the Court the right and power to be governed by the ordinary rules of the Senate, in the absence of any rule to the con-

trary,—that the Court can extend the time by unanimous consent, just as the Senate could extend the time on any matter before them by unanimous consent. That would be my idea about it.

Senator Bee: I understand that, if the Senator will permit—I understand that, but I am inclined to think, I thought it would be better that we have an understanding, if we could reach one.

Senator Lattimore: How would 12:30 suit you?

Senator Bee: That would be, I think, very satisfactory, if we could set the hour for the vote at 12:30 on the report.

Senator Lattimore: That would be perfectly satisfactory to me.

Senator Hudspeth: Why not make it one o'clock?

Senator Gibson: Mr. President—

Senator Bee: Well, one o'clock would suit me all right. I don't want to infringe on the Court's time, is the only thing.

Senator McNealus: Mr. President. does the Senator from Bexar yield?

Senator Bee: Yes, sir.

Senator McNealus: Senator, don't you think we have got pretty good galleries right now?

Senator Bee: I want to say, Mr. President, to the Senator from Dallas, that I know his remark is facetiously made. We are now debating the first precedent in Texas that fifty years from now is going to be passed upon as a precedent, just as Senators will debate the Pickering impeachment in the United States Senate, in 1803. Fifty years from now, one hundred years from now, the chances are it will come to pass, and I am sure it will, this precedent will be discussed as to the manner and mode of judgment in future impeachments, and so far as the Senator from Bexar is concerned these galleries can be as bare as his hand under his judgment in this matter. I say that in answer to the Senator from Dallas.

Senator Lattimore: Mr. President, I am sure it is satisfactory to all the members of the Senate for the time to be extended, if necessary, until one o'clock.

The Chair: All right. The Chair will lay before the Court now the reports of the—the report of the majority and the report of the minority of the Committee on Civil Jurisprudence.

Senator Lattimore: Mr. President, I think it would probably be proper, in order that the Reporters may incorporate it in the record, that with the unanimous consent of the Court we extend the time to one o'clock.

The Chair: Is that the time suggested or agreed on—one o'clock?

Senator Lattimore: Yes, sir.

The Chair: The Chair asks the unanimous consent that the time of voting on these reports be extended until one o'clock today. Is there any objection? There is none, the time will be extended.

Senator Gibson: Mr. President, I want to make an inquiry. Ought not the record to show that the time for extending the time fixed for voting on these reports should be one o'clock, or the time of passing judgment? The resolution and record show that the time for passing judgment will be at high twelve today. Now, should the record show that the time for voting or the time for passing judgment was extended, or will that be decided in the vote?

The Chair: Some one might make the request that the time for pronouncing the judgment be extended to one o'clock. That request was not made to the Chair a while ago. If some member of the Court will make that request, the Chair will lay the request before the body.

Senator Lattimore: I think, Mr. President, I will say to the Senator from Fannin, inasmuch as the judgment itself has been reported to the Senate, that the vote of the Senate upon that judgment will be in effect passing the judgment, because we did not call anyone before us.

The Chair: The Secretary will read the report of the majority of the Committee on Civil Jurisprudence.

(The Secretary started the reading of the report when he was interrupted by Senator Bee, as follows, to wit):

Senator Bee: Mr. President—

The Chair: (To the Secretary): Just wait a second.

Senator Bee: May I interrupt the reading sufficiently to ask permission to suggest that it would not be necessary, in reading the report of the Committee, to read the

charges, but just merely that certain charges were sustained, and then the judgment, because the charges are quite lengthy?

The Chair: All right. Unless the request is made for the reading of that part, the Secretary will omit the reading of that part.

(Thereupon the Secretary read the report of the majority of the Committee on Civil Jurisprudence, as follows, to wit):

Special Committee Report.

Committee Room,
Austin, Texas, September 24, 1917.

To the Honorable W. L. Dean, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred the question of the formation of the judgment in the impeachment trial of Governor Jas. E. Ferguson, hereby recommend that the form of judgment hereto attached be made the judgment of the Court of Impeachment.

(Signed) LATTIMORE,
Vice Chairman.

State of Texas vs. James E. Ferguson:

Whereas, the House of Representives of the State of Texas did, on the 24th day of August, 1917, exhibit to the Senate of Texas Articles of Impeachment against Jas. E. Ferguson, Governor of the State of Texas, and the said Senate, after a full hearing and an impartial trial, has by the votes of two-thirds of the members present, this day determined that the said Jas. E. Ferguson is guilty as charged in the 1st, 2nd, 6th, 7th, 11th, 12th, 14th, 16th, 17th and 19th of said Articles of Impeachment.

Said Articles and the votes thereon being as follows, to wit:

Article 1.

"That there was paid from the funds of the Canyon City Normal School deposited with the Temple State Bank on August 23, 1915, a note of $5,000.00, together with $600.00 interest, due by Jas. E. Ferguson to the First National Bank of Temple, Texas. That said amount has never been refunded to the State of Texas. That in part payment of the total due for the building of the Canyon City Normal College he used other funds, a portion of which belonged to the State, and the balance being in his hands as Governor, and deposited to his credit as Governor in the American National Bank of Austin, which acts constitute a violation of law." The vote for sustaining this Article being 27 for and 4 against.

Article 2.

"That Jas. E. Ferguson received from former Governor O. B. Colquitt more than $101,000.00 the proceeds from insurance policies on the Canyon City Normal School. That at the time said moneys were turned over to him they were on deposit in banks bearing interest at from 4 1-2 to 5 per cent and which remained there for approximately one year, and that he deposited the other amounts in banks in which he was interested as a stockholder, and in the American National Bank, to which he shortly afterwards became indebted. That he received direct and personal profit as a stockholder of the Temple State Bank from the deposits placed with it; thus using and misapplying State funds for his individual benefit and profit." The vote for sustaining this Article being 26 for and 5 against.

Article 6.

"That there was deposited by Jas. E. Ferguson in the Temple State Bank on or about the month of January, 1917, the sum of $60,000.00 belonging to the State of Texas and in the possession of the Secretary of State by virtue of his office, said amount being represented by a check of the Secretary of State, although the State Treasury was open for the purpose of receiving same. That Jas. E. Ferguson was a stockholder in said bank, owning more than one-fourth of the stock, and that the said Temple State Bank and Jas. E. Ferguson used said funds and received the profit and benefits, the said Jas. E. Ferguson receiving more than one-fourth of the profits and of the benefits." The vote for sustaining this Article being 24 for and 7 against.

Article 7.

"That on or about May 29, 1917, Jas. E. Ferguson accompanied T. H. Heard, president of the Temple

State Bank, to the American National Bank at Austin, and the said T. H. Heard deposited to the credit of the Temple State Bank with the knowledge and consent of the said Jas. E. Ferguson, the sum of $250,000.00 of the funds belonging to the State of Texas and in the possession of the Secretary of State, said funds being represented by five checks drawn by the Secretary of State in the sum of $50,000.00 each, although the State Treasury was then and there open for the purpose of receiving same. That the said Jas. E. Ferguson owned more than one-fourth of the stock of the Temple State Bank and that said amount was used by the Temple State Bank for its own profit and benefit, more than one-fourth of which profit and benefit belonged to Jas. E. Ferguson." The vote for sustaining this Article being 26 for and 5 against.

Article 11.

"That in this investigation of James E. Ferguson by the Committee of the Whole House of Representatives said James E. Ferguson testified that during the Regular Session of the Thirty-fifth Legislature and shortly thereafter he received from parties certain currency in varying amounts, the total of which was about $156,500. That said transaction is unusual and questionable, and that the said James E. Ferguson, when questioned as to who loaned him this money, declined to answer, though the officer of the Committee of the Whole appointed to pass on the admissibility of testimony ruled that he should answer, and the Committee sustained said ruling. That he is thus not only in contempt of the House and its Committee, but he insists that he is not required to give before the Representatives of the people of Texas an accounting of said $156,500 in currency which he received during sessions of the Legislature or shortly thereafter, and the receipt of such sums in currency, and the failure to account for same, constitutes official misconduct." The vote for sustaining this article being 27 for and 4 against.

Article 12.

"That James E. Ferguson had on deposit during the year of 1916 in the American National Bank to his account as Governor certain sums of money belonging to the Adjutant General's Department of Texas aggregating more than $3,000, said funds being the property of the State of Texas, but set aside for that department. That in violation of the statutes of Texas he diverted these funds from their lawful purpose and paid same as a portion of the amount for the construction of buildings of the Normal College located at Canyon City." The vote for sustaining this article being 27 for and 4 against.

Article 14.

"That by an express provision of the Constitution and his oath of office the Governor is bound to enforce all laws of the State of Texas. The laws of Texas during the period of his administration expressly forbade State banks to lend money in excess of 30 per cent of its capital stock. This was known to the Governor, yet in violation of this provision of the law he induced the officers of the Temple State Bank to lend to him, James E. Ferguson, an amount far in excess of that authorized by law, which loans were made during the years 1916 and 1917." The vote for sustaining this article being 26 for and 5 against.

Article 16.

"Section 30a of Article 16 of the Constitution of Texas provides for the Board of Regents for the University of Texas, who shall hold office for six years, their terms expiring one-third every two years. The purpose of the people of Texas in the adoption of this provision was to take the University of Texas and all other such State institutions from the control of politics, and to keep the different boards from being under the control and domination of whomever might happen to be Governor. By Articles 2639 and 2640 of the Revised Civil Statutes of 1911 the Board of Regents are given the management of the affairs of the University of Texas with the discretion to remove members of the faculty when in their judgment it is deemed best. That it is the duty of the Governor, or any private citizen, to call attention of the Board of Regents to any mismanagement or improper practices at the University or any other State institution is

readily conceded. The people themselves have given to the Board of Regents by constitutional enactment, which has been confirmed by statutory law, the sole right to judge of the truth of the charges and the punishment to be inflicted against members of the faculty. The Board of Regents in their sphere are just as supreme as the Governor is in his, each having both constitutional and statutory duties to perform, and each being answerable to the people of Texas. The Governor of Texas not only filed charges against certain members of the faculty, as he had a right to do, but after the members were exonerated by the Board of Regents he has sought to have the members of the faculty expelled from that institution because he desired it. He has thus sought to set aside the Constitution and law giving to the Board of Regents the discretion in matters of this kind and assert instead of their legal judgment his own autocratic will." The vote for sustaining this article being 22 for and 9 against.

Article 17.

"Article 6027 of the Revised Civil Statutes of 1911 provides for the removal of members of the Board of Regents (among other officials) for 'good and sufficient cause.' The Governor has sought to remove members of the Board of Regents without such cause, has demanded resignations of others without reason, simply and only because he could not dictate to them as to how they should cast their votes in reference to matters arising before them. Such conduct was a clear violation of the law, and would serve to make inoperative the provision of the Constitution providing for six-year terms of office." The vote for sustaining this article being 22 for and 8 against (1 present and not voting).

Article 19.

"The Governor of Texas has sought to use the power of his office to control members of the Board of Regents. The chairman of the Board of Regents had become surety on a bail bond, the case pending in Jones County, Texas. The defendant escaped and judgment was secured on the said bond in the sum of $5,000 against the principal and sureties, one of the sureties being Wilbur P. Allen, chairman of the Board of Regents of the University of Texas. He applied to the Governor of Texas for the remission of the judgment, which he would have had to pay, and without good reason but only to influence his action as a member of the Board of Regents, James E. Ferguson as Governor remitted the forfeiture of $5,000, which except for such action of James E. Ferguson, would have belonged to the people of Texas." The vote for sustaining this article being 21 for and 10 against.

Now, therefore, it is adjudged by the Senate of the State of Texas sitting as a Court of Impeachment, at their Chamber, in the city of Austin, that the said James E. Ferguson be and he is hereby removed from the office of Governor and be disqualified to hold any office of honor, trust or profit under the State of Texas. It is further ordered that a copy of this judgment be enrolled and certified by the President Pro Tem. of the Senate as presiding officer, and the Secretary of the Senate, and that such certified copy be deposited in the office of the Secretary of State of the State of Texas, and be printed in the Senate Journal.

The Chair: Mr. Secretary, read the minority report.

The Secretary: We have sent the copy down to the printer, to incorporate it in the Journal.

Mr. Yarbrough: Perhaps Senator Bee has a copy.

Senator Bee: I handed you the minority report last night, Mr. Yarbrough.

Mr. Yarbrough. It has been sent to the print shop to be printed in the Senate Journal.

Senator Bee: I haven't another copy, but I think it can be taken from the newspapers, by a unanimous consent.

The Chair: All right, if there is no objection.

(The Secretary thereupon read from the San Antonio Daily Express the minority report of the Committee on Civil Jurisprudence, as follows, to wit):

We, a minority of your Committee on Civil Jurisprudence, to whom was referred the question relating to the preparation of a judgment to be adopted by the Senate, and to be pronounced upon the Respondent, James E. Ferguson, by the Senate, sitting as a Court of

Impeachment, beg leave to differ with the majority of your said Committee as to the form of judgment recommended by them. We agree with them in so far as the judgment recommends the removal of the Respondent from office, but disagree with them as to so much of the judgment as seeks to pronounce upon the Respondent disqualification to hold any position of honor, trust or profit, under the State.

We respectfully beg leave to recommmend that the words "and be disqualified to hold any office of honor, trust or profit under the State of Texas," contained in said judgment be stricken therefrom, and that the form of judgment recommended by the majority of said committee be adopted, save and except the said words, "and be disqualified to hold any office, of honor, trust or profit under the State of Texas." as contained in the last paragraph of said judgment.

(Signed) BAILEY.
BEE.
HARLEY.

Senator Bee: Mr. President.

The Chair: Senator Bee.

Senator Bee: Mr. President, I move the adoption of the minority report.

The Chair: If the Senator from Bexar will yield to the Chair, it seems more regular to the Chair that first a motion be made to adopt the majority report, and then a substitute to that.

Senator Suiter: Mr. President, I move the adoption of the majority report.

The Chair: The Senator from Wood moves the adoption of the majority report. The Senator from Bexar moves as a substitute that the minority report be adopted. The question is, on the motion of the Senator from Bexar.

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt:

Senator Gibson: Mr. President now, at this time, I would like to have an agreement not to interrupt Senators when they are speaking.

The Chair: Does the Senator from DeWitt yield to the Senator from Fannin?

Senator Bailey: I desire to be heard.

The Chair: The Senator from Fannin is recognized.

Senator Gibson: If there is any way not to interrupt, I would like to have an agreement not to interrupt the Senators while they are speaking.

Senator Bailey: I suppose, Senator, that would be left to the man who was speaking, or the Senator, whether he would yield or not.

Senator Gibson: Well, I hope they won't interrupt.

Address of Senator Bailey.

Mr. President and Senators, for the first time during all of the many sessions—three—that I have served in the humble capacity as Chairman of the Senate Committee on Civil Jurisprudence, I have been constrained to sign a minority report, and in doing so I realize fully the responsibility that rests upon me, taking the position that I have taken in this matter. I realize likewise, Mr. President, and Senators, the responsibility that rests upon every Senator here individually, and upon this Senate collectively, in making now a precedent that will stand as long as the mighty commonwealth of Texas shall stand in the constellation and galaxy of our States.

I shall address myself briefly to the position that I have taken, and give to this Senate the benefit of my views in an humble way upon this subject, discussing two features, and presenting to you two propositions. I shall first address myself, and address this Senate, to the proposition that under the Constitution of the United States, this Senate has the right to fix any penalty not beyond the penalty prescribed by the Constitution of Texas. And having discussed that, I shall then discuss the proposition of the policy we should pursue in assessing the penalty or punishment and pronouncing judgment upon the Respondent.

I do not think that it is necessary for me to say to those of us who are lawyers here, that a different rule of construction applies in the interpretation of our State Constitution and the Constitution of the United States. But to the laymen who are among us, to those of the Senators who are not lawyers, without disrespect to them, and especially to those who like to read the Constitution, as they read the Blue-Back Spelling Book in their early days, I want to say that the Constitu-

tion of the United States is to be construed with a greater strictness than that of the Constitution of our State; that in construing the Constitution of the United States we must remember the principles laid down for years and years that that Constitution must be strictly construed, and that Congress can do only what the Constitution in express terms gives it the power to do. A contrary rule prevails when we direct our attention to the organic law of our own State, and the rule of construction that has been adopted and followed for years in the construction and interpretation of the organic law of our State is that the Legislature, or either branch of that body, has absolute power to do anything that is not expressly inhibited by the terms of our State Constitution.

We are without precedent upon this question in our own State, and must look, therefore, for precedent to other States and to Congress in the matter of impeachment trials. The Constitution of the United States upon the question of impeachment uses this language:

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial and punishment, according to law."

The Constitution of Texas, and so much of it as deals with the judgment to be pronounced in cases of impeachment, provides that,—

"Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law."

The Constitution of the United States uses the words, "shall not extend further than," while the State Constitution uses the words, "only to."

I cannot see, Mr. President and Senators, the difference in the reading and the language of the two articles, the one of our Federal Constitution and the other of our State Constitution; I cannot see the difference in meaning and effect between the language, "shall not extend further than," and the language, "shall extend only to;" but a nice distinction was made in the committee room, and upon that distinction hinged largely the return of the minority report. If this Senate agrees with me in my construction of these two sections of these two organic laws, we need go no further, because the Constitution of the United States, and that section of it, dealing with the question of a judgment in the case of impeachment has been construed time and time again as being merely directory, and as giving to Congress power to assess any penalty within the maximum laid down,—that of removal from office, and that of disqualification, stating in effect, Mr. President and Senators, if not in exact language, that this clause in the Federal Constitution was directory—was directory and not mandatory, that it left with Congress the absolute power to assess any penalty in entering up a judgment where a party had been impeached, not exceeding removal from office, disqualification to hold any office, suspension from office, the assessment of a fine, or both, or all; and even gave them power to assess the costs of the impeachment proceedings against the party impeached. That was the decision in the Pickering case, and I refer the Senators to Mr. Foster, in his excellent work on the Constitution, and the first volume of it. Pickering was, I believe, an appraiser in a custom house, possibly at New York. He was impeached. Articles were preferred against him by the House of Representatives of Congress, he was tried in the Senate, and the trial lasted during the latter part of 1802 and 1803; the charges were sustained, he was impeached, and it seems that the main cause for his impeachment, or the cause that governed the Senate largely in sustaining the articles of impeachment, was because the man had lost his mind and was insane. The question arose then, did the Senate of the United States, by reason of his misfortune, have the power to mitigate the penalty, to mitigate the judgment that they were about to pronounce upon him, and simply remove him from office, or was this provision of the Federal Constitution mandatory, and must they also assess the further penalty of disqualification to hold any office forever of honor, or trust, or profit under the United States.

Mr. President and Senators, that is precisely the case that confronts us now, when we find ourselves charged with the duty of interpret-

ing our own Constitution. After a long series of debates, which are fully reported in Elliott's "Debates in Congress," the Senate concluded, strictly construing the language of the Constitution of the United States, and this section, that it was not mandatory, but directory, and that it conferred upon the Senate the power to assess any penalty not exceeding the maximum penalty assessed or prescribed in this article of the Federal Constitution. The result was that the Senate of the United States, sitting as a Court of Impeachment, as far back as 1803, laid down by its decision the broad principle that "he who runs may read," wayfaring man that he be, that the Senate of the United States, when a party was impeached, when the charges were sustained, when he was brought before the bar of the Senate for the Senate to pronounce its solemn judgment upon him, had a right to assess any penalty and pronounce any judgment, so long as it confined itself to the maximum limit laid down in that article of the Federal Constitution. The Senate removed Mr. Pickering from office, and that was all. The Senate held that that clause of the Federal Constitution was not mandatory, the Senate of the United States held that that clause of the Federal Constitution was directory; it held that the Senate had the power to do anything with him by way of punishment, except, probably, to convict him of a felony, where the bill of rights intervened, and provided that no man should even be brought to trial for a felony, except by an indictment found by a grand jury of his peers. The Senate of the United States held that they had a right to remove him, and to stop. They removed him and assessed no further penalty, and pronounced no further judgment. Mr. Foster, in his treatise on the Constitution, Volume 1, page 626, in discussing the power of the Federal Congress upon questions of impeachment, and especially the powers of the United States Senate in pronouncing judgment, uses the following language:

"The Constitution of the United States provides that 'judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.'"

These words in quotations, Mr. President and Senators, and then the text adds:

"Most State Constitutions are similar in this respect."

And I have taken the time and pains, with the assistance of others, to examine the Constitution of nearly every State in our Union and find that this eminent text writer is eminently correct. The words used in our own State Constitution of Texas, "shall extend only to," are used identically in the language of the Constitution of California, in the Constitution of Iowa, and almost identically in the Constitution of Tennessee, except that the word "only" is transposed, the Constitution of Tennessee providing not that the penalty shall extend only to this, but saying that it shall "only extend" to this; the word "only" precedes the word "extend," while in the Constitution of California, of Iowa and Texas it follows it.

Now, in discussing that, Mr. Foster says:

"When the President, Vice President or an officer of the United States is convicted upon impeachment, he must be removed from office according to the express language of the Constitution."

"He must be removed." That part is mandatory, that part is mandatory; and I want to answer in advance an argument that probably will be advanced in this Senate by those of my distinguished colleagues here who will take an opposite position from that taken now by me, in placing their construction upon this language of the Federal Constitution, that you could inflict one penalty or the other, in your own discretion. They advanced in the committee room honestly and earnestly that you could disqualify without removal, that you could assess the latter penalty and not assess the former, that you could leave the man in office and disqualify him, if I and those of this Committee are right in our construction of this section of the organic law of our nation.

Why, Mr. President and Senators, you can see at a glance, without dwelling further or longer upon this, that this argument is not only spe-

cious, but absplutely fallacious. And why? Because, if they are correct, if their construction of the Constitution is right and proper and reasonable and just, if you disqualify by your judgment, without removal, I submit to you that by disqualifying you have automatically removed. You cannot leave him and disqualify; if you disqualify the man, you ipso facto remove him, he is automatically removed, and so said Mr. Foster in the text here, discussing this clause of the Constitution. That part of it is absolutely mandatory on us, we must remove. The question then presents itself to this Senate, construing the Constitution of the United States, can we stop there if we pronounce this judgment, under the Constitution of the United States, without reference to our own organic law? Yes, yes. Mr. Foster says so, and I say so, and why do we both say this—he in the text and I in this feeble address? Because we are following the precedent laid down by the Senate of the United States as early as 1802 and 1803 in the Pickering case. Pickering was convicted of many charges, as appraiser, I believe, of the port of New York, or some other important Federal office. Various charges had been preferred, and many of them had been sustained, but when the fact presented itself that this man was insane, that he was a broken reed and a broken vessel, and ought to be dealt with gently, the great Senate of our Union rose up, in the strength of its manhood and said what I shall say to this Senate when I come to the question of policy. A brave man and a great man ought not to let his passion and his prejudices and his impulses take from him a sense of mercy and force him to kick a dead lion (reading from Foster on the Constitution):

"When the President, Vice President or an officer of the United States is convicted upon impeachment, he must be removed from office, according to the express language of the Constitution. The Senate has discretion whether to add to this penalty disqualification to hold any office under the United States. In the case of Pickering, removal from office was the sole penalty imposed. (Citing Pickering's trial, Annals of Congress, 1803-1804, pages 366-367.) In Humphrey's case, disqualification to hold any other office of honor or trust under the United States was also imposed. The Senate of the United States has no power to disqualify the Respondent from holding office under any State."

But I want to call your attention to the rule, Senators, laid down by the Senate of the United States, when it imposed disqualification, and which was probably a reason for making the distinction that a political office is not the only one contemplated. While I have not examined thoroughly, for lack of time, the question, it is plain to my mind by analogy of reasoning, that if this Senate in its wisdom sees fit, in addition to removing the Respondent Ferguson from office, to place upon him the further disqualification to hold any office of trust or honor or profit in this State, he will be disqualified, not only to hold a political State office, but, I believe, he will be disqualified to hold any fiduciary office created by the courts of this State—that he cannot be the guardian of a minor child's estate, that he cannot be the administrator of a dead man's estate, that he cannot be executor under a will unless, perchance, it is an independent will, that he cannot be a receiver of an insolvent railroad or other corporation, and—listen to what the United States Senate says, how far and far-reaching this disqualification goes:

"It may be that disqualification to hold offices under the United States would prevent the party accused from practicing as an attorney and counsellor at law in any of the Federal courts."

(Citing Hunt's Impeachment, appendix to Prescott's Impeachment Trial, page 216.)

Now, Senators, a thoughtful consideration of this subject will lead us at once to ascertain the reason of the Senate of the United States in making this distinction and in holding in the Pickering case, which they have followed ever since, that they had the power to make the penalty commensurate with all the facts of the case, sufficient to punish the man that had been convicted, so long as they stayed within the constitutional maximum or limit prescribed by the Constitution of the United States. But they say we must not accept as a precedent here the rule of construction laid down by the Senate of the United States. Texas must make

history; we must wander away from the landmarks and well-beaten paths the fathers have laid out before us; we must rely on our sense of the English language, our knowledge of grammar and punctuation. And, I say, would jocularly read the Constitution here like you read the Bull Durham tobacco sign on the gable end of some farmer's barn. I can not, Senators, accept that reasoning; I can not subscribe to that logic; I want precedent upon a matter of this importance, and I would rather brush aside my crude ideas formed here in the space of two days, or even two weeks, or two months, in order that I might learn, in order that I might imbibe the wisdom embodied in the rules that have been advanced by the courts of this country, and the Senate of the United States, for more now than a century. If you then perchance will brush aside this construction of this section of the Federal Constitution, the Senate of the United States passed upon it, and say that we, as the sovereign State of Texas, have the right —and I grant it—I would not debate that question a moment—have the right to arrogate to ourselves what we will do and what we will say by our votes and what construction we shall place upon this section of our organic law; it is within the province of this Senate to do so, but it does occur to me, Mr. President and Senators, that in doing this we ought to be governed, I say, not by as rigid a rule as *stare decisis*.

The Chair: Will the Senator from DeWitt yield a moment? The Chair regrets to observe that a great many people in this Chamber are here apparently to engage in private conversation. Now, if that is your purpose here, please retire outside and have your conversations there. We do not want it here. Proceed, Senator.

Senator Bailey (resuming his argument): Not bound, Mr. President and Senators, by the decisions of other States, as we would be bound by the rule of *stare decisis*, but we ought to take any well-considered cases or reasons advanced by the Senates of these States, considering the circumstances of the cases on which they were passing, and from them make up our minds whether we, sitting here as a High Court of Impeachment, members of the highest branch of the Legislature of the greatest State, in my judgment, in this Union, lest we might err, lest we might err! As was said by the distinguished Senator from Cooke in the committee room, in some brief suggestions that he offered, this is a court without appeal—this is a court without appeal. From the solemn judgment pronounced here today by this Senate, sitting here as a Court of Impeachment, there is no appeal. You are called upon, Mr. President and Senators, to do something that is irrevocable; you are called upon to do something that your successors can not undo. When you have placed this ban upon this Respondent, when you have said to him by your votes today that so far as holding an office of honor, trust or profit within this grand old commonwealth of Texas is concerned, he occupies the position of the heathen Chinee, no better than a Chinese laundryman, that walks the streets of Austin; proud though may be his ambitions, useful as he might be, repentant as he may become, the die has been cast, this Senate has said, no other Senate can unsay it, and the only way to relieve it, if it can be done at all, will be by some constitutional amendment adopted by the people of your commonwealth, who have adopted this Constitution, giving to this Legislature the right to relieve from disabilities this man upon whom you have placed this ban!

Senators, ought not we to be careful? Ought not we to be careful? Ought not we to realize the responsibility that rests upon us here this morning?

Now, then, let us see what the other States have done, what the Senates of our sister States have done in the way of a constitutional provision, defining and fixing and limiting the powers of their respective Senates in pronouncing judgment upon a man who has been convicted under impeachment charges. That the Constitution of the United States, and this section of it, is followed closely by the writers, in constitutional conventions assembled of the various Constitutions of the several States of this Union, cannot be questioned for a moment, the language being almost identical, with the exception of the use of these words "further than,"

and "only to." Illinois, West Virginia, New Jersey, New Hampshire, Maine and Kansas have followed literally the construction placed—have followed literally the language used in the Federal Constitution, and the Senates in those States, I presume, have followed the construction placed upon it by the Senate of the United States. Iowa and California have identically the language used in the Constitution of Texas, discarding the words "further than," and using the words, "only to." Tennessee uses the language of the Texas Constitution, but instead of saying "shall extend only to," says, "shall only extend to," transposing the word "only" and placing it before the word "extend," instead of after it, as is done in the Constitution of Texas. Florida and Alabama use none of these words but use the simple word "beyond," a more expressive term to my mind, than that used by any other Constitution, showing plainly—

Senator Hudspeth: Will the Senator yield?

Senator Bailey: Yes, sir.

Senator Hudspeth: What has been the result of the trials of impeachments in those States where they had that language in their Constitutions?

Senator Bailey: I am coming to that in a moment,—Showing plainly that it was in the minds of the framers of the Constitutions of Alabama and Florida that a limit only should be placed upon the penalty to which the Senate might proceed. The word "only" has been discussed, it has been looked up by members of our committee, and the position was taken, which impressed me forcibly at the first blush, by a distinguished member of that committee, who earnestly presented to the committee his construction of it, that when you say, "I shall go only to the Driskill Hotel," it means I shall not stop between here and there; but when you say, "I shall go no further than the Driskill Hotel," it gives me the privilege of stopping at any intermediate points.

What did the framers of the Constitutions of Alabama and Florida have in their minds when they said "beyond?" "You shall not go beyond this fixed limit that I have placed upon you, when you assess the penalty upon a party convicted in an impeachment trial." Wasn't it directory, didn't it fix the maximum limit of the penalty, didn't it vest the body with trying and assesesing the penalty and pronouncing the judgment, if not expressly, I submit, Mr. President and Senators, by implication, the power to assess any penalty not beyond that, or any part of it, provided it did not carry with it the conviction of a felony, the mode of trial and conviction and judgment of which had been fixed by the bill of rights, both by the Constitution of the United States and the Constitutions of those particular States and vested first in a grand jury of his peers to prefer the indictment, and, afterwards by a jury of his peers to try the issue formed by the defendant and the State under the indictment—between the State and the defendant on the indictment. I would subscribe to that doctrine, I would subscribe to that interpretation made by my friend, a member of that committee, and a distinguished and able Senator, if the word "only," had been used in a different place. When you tell me I shall go only to the Driskill Hotel, I say you mean that shall be the limit of my journey from this Capitol, and I can halt at any place between here and there. If you do intend that "only" should be a restrictive word, and it is true with an exclusive meaning, as advanced in the argument by this Senator, I would have said to the Senator, as I did, when I thought about it afterwards, if the framers of this Constitution of Texas had meant to use the word "only" in that way, where would they have placed it? They would have placed it further on, and instead of saying, "You shall only go to the Driskill Hotel," they would have said, "You shall go to the Driskill Hotel only."

I call the further attention of this Senate, in referring to your Constitution, and to that provision of it, that is printed in our Manual, it has an error; as printed in this Manual, there is no comma between "office" and the word "and." We discussed that matter. We produced the original document in the handwritings of our fathers, and the enrolling clerk of that constitutional convention, from the Secretary of State, and the comma was there, and a comma ought to be here in this print, showing that there

were in the minds of the framers of the Constitution two separate kinds of punishment that might be inflicted. It is true it is conjunctive, but there is a break, there is a separation. You can do what? "Remove from office," a comma—a comma, "and disqualify." Now, Senators, I am going to close briefly. This question has been decided by the State of California in express terms, and by the Senate of the State of California. The State of California has the identical language of our State, as also has the State of Iowa in its Constitution. I will read you from the Constitution of California:

"Section 18, Article 4. The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Surveyor General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts shall be liable to impeachment for any misdemeanor in office."

There is some difference there. Now, mark this language, which is ours identically:

"But judgment in such cases shall extend only to removal from office and disqualification, to hold any office of honor, trust or profit under this State."

We have a precedent now, if we respect the decision of the California State Senate. We do not have to follow it blindly, I admit, it is not a rule of *stare decisis*, as lawyers say, but it has its binding force and effect, it has its moral consequence; that Senate was composed of thirty-six able men, ours is composed of thirty-one,—from a State not grander nor prouder than Texas, but a State that emanated from the same sources as Texas, a State that like Texas was won from Mexico, the soil which forms her domain and her realm. A district judge was tried in California upon impeachment charges in 1862, during the heat and fervor of reconstruction days, during the Civil War, rather—during the Civil War, James H. Hardy, Judge of the Sixteenth Judicial District, was impeached before and convicted by the Senate of the State of California. I read from page 712, of the first volume of Mr. Foster on the Constitution:

"The articles charged him with a number of corrupt decisions, for the benefit of his friends, no charge of bribery being made. The principal ones were alleged to have been made for the purpose of delaying litigation, and thus enabling the defendants to compromise. He was also charged with advising counsel outside of court as to the course they should take, and the decisions which he expected to make."

Charged, Mr. President and Senators, with corruption on the bench, delaying litigation that a friend might compromise it, and telling practicing lawyers at the bar what his decisions were going to be, in advance of when those decisions were handed down, a case involving much more moral turpitude than the acts charged to this Respondent, which I say that, while I voted to convict upon many of the charges, were technical in many instances. The case in California, the impeachment of Judge Hardy, in my judgment, if I had been a member of the Senate of California, ought to have merited, and did merit, and ought to have received the maximum penalty, not only of removal from offiec, but perpetual disqualification. Without reading it all, without tiring this Senate with the history of the case, I read the result:

"The Respondent was acquitted on all the articles except those charging treasonable language. He had in his favor a large majority, and in some cases a unanimity upon all the others except those relating to the trial of Judge Terry, and on that charge he was acquitted; the vote standing eighteen for him and seventeen against him. He was convicted by a two-thirds vote of twenty-four to twelve on the fifteenth article of impeachment, which charged him with profane language out of court, and the expression of sympathy with secession, Jefferson Davis and the Confederacy. The sentence was simply removal from office, a proposition to limit the punishment to a suspension for six months was voted down."

Now, I take it, Mr. President and Senators, I have tired you long enough, that these precedents that I have read to you in other States are ample authority to you for placing this liberal construction upon this Constitution which we are trying now to interpret. If we follow the well-laid down rules of interpretation and construction that this Senate can do anything that the

Constitution does not inhibit, then, why by analogy and process of reasoning can't you suspend this portion of this penalty clause? Does this Constitution say anywhere that you shall disqualify him forever? It is as silent as the tomb! In the Minnesota case, the State Senate of Minnseota, trying, I believe it was, a defaulting treasurer or some other officer, under this clause of the Minnesota Constitution, which was almost in exact terms the same as that of the Federal Constitution, removed the Respondent from office and disqualified him—was it two or three years, Senators—some of you on the Committee?

Senator Collins: Three years.

Senator Suiter: Three years.

Senator Bailey: Three years, and disqualified him for three years. The Minnesota Constitution does not say disqualify him forever, the Texas Constitution does not say disqualify him forever. In Texas, as in Minnesota, and in California, the Constitution fixes only the maximum penalty which the Senate in its discretion may impose. Then, by analogy of reasoning, *a fortiori*, if we can assess a penalty of disqualification for a period of years, can't we go on and assess it for a period of months, for a period of weeks, or for a period of days and minutes; and, *a fortiori*, can't we decline to assess it at all? I think so—I think so. Now, Senators, I come briefly to the question of policy. Ah! some of you have said, "This man will take this question to the people, he will be a candidate again, he will keep up a continual state of turmoil among the citizenship of our grand commonwealth, and we want to oppose that." Would you, if sitting upon the jury, under your oaths, when the evidence was brought before you and it showed that a man ought to be acquitted, render, in violence to your conscience, a judgment against him and convict him simply because you were afraid of him? There is not a Senator in this Chamber that would do that. I would rather the people would pass upon this matter. I wish, Mr. President and Senators, that the people of Texas could have passed upon it in the first instance, instead of placing the responsibility upon me. I love the people of Texas, I have lived among them for more than a quarter of a century, and I have never feared them. If they want to pass upon it, we ought to give them the privilege; we have done wrong, maybe, we have done right, maybe—we have done the best we could with the lights that were before us upon one of the most solemn and important occasions ever within the life of any of us, and which probably never will come into the lives of any of us again. Like the people of Texas, we are made of clay, like the people of Texas we are not infallible, and while I believe that I did right, while I know that every Senator in this Senate Chamber feels that he did right, still there is room for error. So far as I am concerned, I dismiss from my consideration that question at all, willing, ready and anxious for the proud citizenship of imperial Texas to correct any wrong perchance I might have made. Are you going to, as a matter of right and justice and policy, place upon the brow of this Respondent such a penalty as this upon such charges as these? The reason for this limit is obvious; the penalty in this case, as in all other cases, ought to be commensurate with the deed shown to have been committed by him. If he had blown up this Capitol, if he had burned down that sacred institution on the hill, if he had done such acts of extreme violence and injustice as that, I would say put upon his brow this disgrace that would follow him to his grave and be left as a heritage to his wife and children. There was reason for this, there was reason for writing this in the Constitution. The framers of the Constitution evidently intended to leave to the control of the Court—the Senate sitting as a Court of Impeachment—the right to mete out such penalty to and upon a convicted Respondent as would be commensurate with his conduct in the past. Let us try him, Senators, that way, let us accept this construction of the Constitution, let us try him for what he has done, and not for fear of what he may do; if he wants to run for office, that is his privilege, if the people want to say we are in error, that is their privilege; but I ask this Senate in all earnestness and seriousness to adopt this minority report, and only remove this man from office. Mr. President and Senators, I thank you.

Senator Collins: Mr. President—

Senator Hudspeth (Interrupting): Mr. President, I ask the unanimous consent of the Senate to take a re-

cess, so we may have lunch, until 1:30, and that we conclude this argument and take a final vote at 4 o'clock.

The Chair: The Senator from El Paso asks the unanimous consent that we recess until 1:30, and then resume our sitting as a Court, and take a vote on the question at 4 o'clock this afternoon. Is there any objection? There is none, the Court will now rise, to meet at 1:30.

(The Court thereupon recessed until 1:30 o'clock p. m. of the same day.)

After Recess.

Tuesday, September 25, 1917.

Afternoon Session.

(Pursuant to recess adjournment the Court reconvened at 1:30 o'clock p. m. of the same day.)

The Chair: The Court will come to order.

Senator Bee: Mr. Chairman, let us have order.

The Chair: Let us have order, please.

Address of Senator Collins.

Mr. President, gentlemen of the Court, as a member of the committee to which this resolution was submitted, and as one who gave my sanction to the majority report, I appear before you in defense of the position I took before the committee, and in defense of the vote that I shall cast upon the floor of the Senate. I am not unmindful of the gravity of the responsibility that rests upon a man when he occupies the position that we gentlemen of this Court occupy at this time, when it comes to making a precedent that shall be recorded for all time to come, and will be a memorandum in the Journal of this august body when we are mouldering in the dust. I am as mindful of the responsibility that I face and assume here upon this occasion as my friend, the amiable Senator from DeWitt, and facing the responsibility, as I have always faced responsibilities, without fear or favor, when it comes to the discharge of my duty under my oath, I stand here and give my heart and hand and my sanction to the majority report here, without fear of what the consequences of the future may bring.

Now, gentlemen of the Court, I shall first address myself to the policy involved in this proceeding. I shall later address myself to the constitutional provision under which we are meting out the punishment that we are to mete out upon this occasion.

The policy involved—what is the policy, my friends? Is it sound, public policy? If we are permitted under the Constitution, which I deny,—if we are permitted under the Constitution to stop short of the extreme penalty prescribed by the Constitution, is it sound public policy for us to do so? I am going to lay down in the beginning this proposition: I expect more and demand more of public officials than I do of private citizens, and the higher the official duty to which a man has been called to discharge, the more I demand of him in the performance of a public function. If a man is called to fill the office of justice of the peace, I do not demand so much of him as I do of the man who is called to fill the office of district judge. If a man is called to fill the office of district judge, I do not demand or expect as much of him as I do a man called to fill the office of justice of the Supreme Court. When a man is called to fill the office of Justice of the Supreme Court, I neither expect nor demand as much of him as I do of the man called to the highest office within the gift of the people of the State, but a man who puts his hand upon his heart and upon the Bible and swears he will not only keep the law himself, but that he will see that everybody else does, I require him to be above reproach. That is the standard that I have fixed and require of the man who assumes the duties of Governor of Texas, and nothing else than that is the demand of the Constitution of Texas,—nothing less than that is the demand of the highest citizenship of Texas. They than that is the demand of the highest citizenship of Texas. They brush aside, try to make you believe, gentlemen, that the Governor of Texas stands convicted on mere technicalities. They brush aside and try to make you believe that the Governor of Texas does not stand convicted of a statutory crime, that he does

not stand convicted of one of the crimes prescribed by statute which makes it felony to do those things. But I tell you, and I shall read the charges upon which he stands convicted—I tell you he stands convicted of high crimes under the Constitution and laws of Texas, and for us to temporize with a matter of such great importance to the destiny of this State, my friends, for us to temporize with it, is to fail to stand up in the might of our manhood and represent the high constituency that sent us here to perform this solemn duty. To me it was a very grave duty even when I had to vote "aye" upon these articles of impeachment and had to say by my vote, "I believe the evidence sustains these articles of impeachment." It was no pleasure to me, I am naturally weak in that direction, and to you who have seen me stand upon the floor of the Senate and fight for hours for the passage of the suspended sentence law, you may be surprised that I am assuming the attitude before you that I am assuming here. But, gentlemen, I do not expect as much of a negro crap-shooter or negro hog-thief as I do of the Governor of Texas.

There are two reasons why a man called to the office of Governor of the great State of Texas should not only live up to the law himself, but to require others to do so. He has that same inherent duty that every other citizen has, to live up to the laws of the State, and every good citizen is going to do it. Then, in addition to that, he has taken the constitutional oath that he will keep the laws and the Constitution of Texas, and that he will see that others do so; and I say he has a double responsibility, has the duty of every citizen, first, the duty of every citizen to keep the laws of his country scrupulously. He then has taken the oath prescribed by the Constitution, that he will not only do so himself, but will require a like obedience from every other citizen; and it is not a question of motive. I do not believe that any man who represents a splendid constituency upon the floor of this Senate, and that includes all, I do not believe any man is going to vote otherwise than his convictions. The amiable Senator from DeWitt, whom I have known so long and so favorably, I know—I know that nothing except the purest motives ever inspired an act of his, or vote upon this floor; he does not have to send up his reasons, because I know they are always pure and loyal and worthy of the great man that he is. We do not question your motives, it is a question of public policy, and when they undertake to brush aside, when they undertake to minimize the great offense that has been committed by the Governor of Texas,—and I tell you that they do us an injustice, who have voted to sustain those articles of impeachment. If it had been a mere technicality, if it had been a mere technical violation of the law, I am not sure, so sure, what my position would be upon this question; but this is not a technical violation of the law, it is a willful, intentional violation of the law of Texas, in my candid judgment, and for that reason I voted "aye" on nineteen of the charges of impeachment against the Governor. Let us see what these aticles are! Let us see what the Senate of Texas has impeached the Governor of Texas for; let us see if you do not agree with me that he stands convicted upon the highest crimes. Perhaps, outside of two statutory crimes, the the crime of rape and murder, greater crimes could not have been committed in Texas than the crimes with which the Governor of Texas—or ex-Governor of Texas—stands charged at this time. Let me further preface my remarks by saying this: In my candid judgment, if we were to fail to make any other record in the Senate Journals of Texas than what we have already done, to mete out the prescribed constitutional penalty, Governor Ferguson would be both removed from office and disqualified from holding office again. I do not think we have to write any further judgment than the two-thirds of this august body wrote in the Senate Journal of last Saturday, as we did, and that is, he was guilty of the articles of impeachment filed by the House of Representatives; that automatically removed him from office, and in my judgment automatically disqualified him from holding any other office in Texas again. Gentlemen, it is no personal spleen on my part. I represent, as you do, a goodly constituency; I represent, as you do, a worthy citizenship; I have to go back, as you do, go back home

and give an account of my stewardship, as you have, and I have got to go back home and face my wife and children, and if I were to fail to do my full duty, that the Constitution requires of me, after taking the solemn oath that I took to try this man according to the law and the Constitution, to mete out proper punishment to this man, I could not face my wife and constituents. I stood here and voted against a majority of the members who were committed to this theory of this case that I am. I voted against them according to the rules of evidence, because my conscience and my judgment first directed that I should believe otherwise, and my conscience impelled me to vote for the sustaining of the objection made by counsel for the defense to certain evidence upon the trial of this case. But I have got to go back and face my constituency. I know I am writing a record. I know I am writing a record that will live after my children have lived and after my children's children, and I know that without fear I face the responsibility which the Constitution has placed upon me. Do not let them brush aside these issues that confront you, gentlemen; do not let them tell you that they are trivial and mere technical violations of the law. Look here what you sustained by your vote, by more than a two-thirds vote, yes, by a four-fifths vote of the Senate of Texas—look here at the charge you sustained only last Saturday:

"That there was paid from the funds of the Canyon City Normal School, deposited with the Temple State Bank on August 23, 1915, a note of $5,000, together with $600 interest due by James E. Ferguson, to the First National Bank of Temple, Texas. That said amount has never been refunded to the State of Texas. That in part payment of the total due for the building of the Canyon City Normal College he used other funds, a portion of which belonged to the State, and the balance being in his hands as Governor, and deposited to his credit as Governor in the American National Bank of Austin, which acts constituted a violation of law."

The vote to sustain that charge was twenty-seven "ayes" and four "noes."

Gentlemen, is that the technical violation of law that the opponents to the majority report of this committee would have you believe ought to be brushed aside and not considered seriously as a violation of the law of Texas? I am not going to say what action the Court ought to take in the future, I am not going to even conjecture what action the Court may take in the future in regard to this matter. But I tell you it is a violation of the statutory law in Texas, and a crime under the statutes of Texas. Do you believe it was deliberately done? Gentlemen, there is not a man within the sound of my voice who sat and listened from day to day and from time to time to the evidence adduced here, who believed that it was not deliberately done, that he had a note, the payment of which was pressing him, that he drew on the Governor's account—the account of the Governor of Texas, and paid his private note and did not repay that until he was disqualified to hold the office of Governor by the articles of impeachment filed over in the House. Over two years had elapsed and this money had not been repaid. Gentlemen, I will tell you, if you permit the great, the high, the noble, the exalted of Texas society to escape a just punishment for such statutory crimes as that and send to the penitentiary the poor white man and the negro who steals a hog for table use, you breed a condition of anarchy. This body was brought here and sent here to prescribe rules of action for the citizens. If it fosters and encourages the highest officer of the State of Texas in the commission of such a crime as that, and passing on it, passes it up, as a technical violation of the law, then you encourage anarchy in Texas, because no man will respect the law unless it is made equally applicable to the great as well as to the small.

Let us see what other articles you sustained—you sustained that, now, are you going to brush it aside, are you going to show the white feather now, after you voted that he was guilty? Now, are you going to show the white feather and say, "That while I voted him guilty, I believe it was a mere technical violation of the law?" If you had believed that at the start, you ought to have voted to acquit him; if you did not believe it was a wilful and intentional misap-

propriation of funds, you ought to have voted to acquit and to exonerate him, and not voted to sustain the articles of impeachment.

Again, Article 2 was sustained by a vote of twenty-six to five. Let us see what you sustained last Saturday. Are you going to show the white feather now?

"That James E. Ferguson received from Governor O. B. Colquitt more than $101,000, the proceeds from insurance policies on the Canyon City Normal School. That at that time said moneys were turned over to him, they were on deposit in banks, bearing interest at from 4½ to 5 per cent, and which remained there for approximately one year, and that he deposited the other amount in banks in which he was interested as a stockholder, and in the American National Bank, to which he shortly afterwards became indebted. That he received direct and personal profit as a stockholder of the Temple State Bank from the deposits placed with it; thus using and misapplying State funds for his individual benefit and profit."

The vote sustaining this article was twenty-six to five.

Gentlemen, it is made a felony under the statutes of Texas for a man to do otherwise, with public money, than merely to transport it or carry it to the public treasury, when the treasury is open and ready for business. He violated that plain provision of the statute, misapplied, and misappropriated, the money of Texas, contrary to the statutes of Texas. Do you believe that that is a technical violation of law? Not only is it not a technical violation of law, but in addition to its being a violation of law for him to do so, he breached his oath of office when he refused to comply with the law itself—two measures of moral turpitude attached to that, one is that the law made it his duty to do so, and he violated the law; the other is, he breached his oath of office when he refused to comply with the statute and deposit the money where it belonged, and used it for two years and received direct and personal profit for two years' time for the use of that public money. And you fellows voted to sustain that charge! And now you are going to show the white feather and sweep it aside as a mere technical violation of the law!

Again, Article 5:

"That there was deposited by James E. Ferguson, in the Temple State Bank, on or about the month of January, 1917, the sum of $60,000 belonging to the State of Texas, and in the possession of the Secretary of State, by virtue of his office, said amount being represented by a check of the Secretary of State, although the State Treasury was open for the purpose of receiving same. That James E. Ferguson was a stockholder in said bank, owning more than one-fourth of the stock, and that the said Temple State Bank and James E. Ferguson used said fund and received the profit and benefit, the said James E. Ferguson receiving more than one-fourth of the profits and of the benefits."

The vote to sustain this article was twenty-four "ayes" and seven "nays."

Receiving direct profit! Not only did he breach the plain provision of the statute, which required him to deposit that money in the State Treasury, not only did he fail to keep his official oath in refusing to comply with the statute—a statute that he had sworn to uphold and sustain as the Chief Executive officer of this State—but he went and used that money for profit to himself and the bank, to give himself further credit with the bank, possibly, and to enable the bank to make a better showing among the banks of Texas. And you fellows voted to sustain that charge! Are you going to show the white feather now and fail to do your duty and put upon this man who has breached his faith with the people, breached his constitutional and statutory oath and violated the laws and Constitution of Texas, are you going to show the white feather now,—

Senator Page: Mr. President.

Senator Collins: —and fail to mete out the full measure of punishment that is due him?

Senator Page: Senator, whom are you charging with showing the white feather on the floor of this Senate?

Senator Collins: I am charging anybody that shows the white feather.

Senator Page: I want to say to you, Senator, that there are men in this Senate that voted their convictions on this matter, and that if they showed one white feather, you showed

five. I am surprised at your statement on the floor of the Senate at this time.

Senator Collins: I don't know who it is, but whoever the shoe fits may wear it.

Senator Page: Who is showing the white feather?

Senator Collins: I won't know until they vote on the issue. Let them put on the shoe, and if it fits, they may wear it. If any man wants to see me outside of the Senate Chamber, he can see me—I weigh nearly 200 pounds, and if they want to see me outside of the Chamber of the Senate, they can see me; but I am going to do my duty regardless of who may show the white feather.

Senator Page: Does the Senator yield?

Senator Collins: I yield.

Senator Page: Would the Senator like to have a fight about it?

Senator Collins: No, sir, but if anybody fights me I fight back.

Senator Page: Oh, you will.

Senator Collins: Yes, sir, when they smite me on one cheek, I don't turn the other, I will fight back. I am a Christian, but I will fight.

Senator Page: Will the Senator yield further?

Senator Collins: I yield.

Senator Page: You say you are a Christian?

Senator Collins: Yes, sir, I am a Christian.

Senator Page: Well, do you want to have a row with some of us who are not so fortunate as you?

Senator Collins: No, sir. But if somebody wants to have a row with me they can get it. I am going to do my duty here, and I am not going to get mad at anybody, but I am going to talk plain, because this occasion demands plain talk. Nothing short of plain talk would discharge the obligation that I owe to my people, nothing less than plain talk would discharge the obligation that I owe to the good citizenship of Texas.

And now, let us go on down the line to Article 7:

"That on or about May 29, 1917, James E. Ferguson, accompanied T. H. Heard, President of the Temple State Bank, to the American National Bank at Austin, and the said T. H. Heard deposited to the credit of the Temple State Bank with the knowledge and consent of the said James E. Ferguson, the sum of $250,000 of the funds belonging to the State of Texas, and in the possession of the Secretary of State, the said funds being represented by five checks drawn by the Secretary of State in the sum of $50,000 each, although the State Treasury was then and there open for the purpose of receiving same. That the said James E. Ferguson owned more than one-fourth of the stock of the Temple State Bank, and that said amount was used by the Temple State Bank for its own profit and benefit, more than one-fourth of which profit and benefit belonged to James E. Ferguson."

The vote to sustain that article was twenty-six "ayes" and five "nays." Gentlemen, you voted to sustain that. Are you going to show the white feather now, and not mete out the penalty prescribed by the Constitution of Texas? I don't know who is going to show the white feather, I will only know you when you vote, that is all I can say about it.

Article 11 you voted to sustain:

"That in this investigation of James E. Ferguson by the Committee of the Whole House of Representatives, said James E. Ferguson testified that during the Regular Session of the Thirty-fifth Legislature and shortly thereafter, he received from parties certain currency in varying amounts, the total of which was about $156,500. That said transaction is unusual and questionable, and that the said James E. Ferguson, when questioned as to who loaned him the money, declined to answer, although the officer of the Committee of the Whole appointed to pass on the admissibility of testimony ruled that he should answer, and the Committee sustained said ruling. That he is thus not only in contempt of the House and its Committee, but he insists that he is not required to give before the representatives of the people of Texas an accounting of said $156,500 in currency, which he received during sessions of the Legislature, or shortly thereafter, and the receipt of such sums in currency, and the failure to account for same, constitutes official misconduct."

The vote to sustain that article was twenty-seven "ayes" and four "noes."

Gentlemen, I hold this to be the correct standard of public life,—I say that no man holding a public office in the gift of the people can afford to

take fees and favors except official fees, which he could not get as a private citizen. Whenever a man, without security, gets $156,500 and appropriates it to his own use and benefit, it don't make any difference as to what source—

Senator Hudspeth (Interrupting the speaker): Will the Senator from Jefferson face the "white feather crowd" over here?

Senator Collins: How is that, Senator?

Senator Hudspeth: I want you to look at me.

Senator Collins: I will see you, Claud. When a man without security, when his estate is already encumbered up to the handle, gets $156,500.00, it does not come to him as a favor that he would get as a private citizen, and you know it—no man as a private citizen can go out on his personal note, without security, and get $156,000.00—that is a heap of money. I don't know how much it is,—it is more than I can almost conceive of; whenever it was given to a man who got it, procured it without security, gentlemen, it came for an illegitimate purpose, and I do not hesitate to say it upon this occasion, that it did come for an illegitimate purpose.

Senator Westbrook: Mr. President, will the Senator yield?

The Chair: Will the Senator from Jefferson yield to the Senator from Hunt?

Senator Collins: I yield.

Senator Westbrook: I just want to request the Senator to speak louder; I can't hear it. (Laughter.)

Senator Collins: I would liken him unto those who are spoken of in Holy writ, they have ears to hear and hear not; they have eyes to see and see not; let us hope they see with their eyes and hear with their ears and open up their hearts and be converted, and do their duty as Senators of Texas.

Senator Page: Mr. President, does the Senator yield?

Senator Collins: I yield.

Senator Page: I thought that we were in the Senate of Texas, but it sounds like, to me, a negro camp-meeting is in progress somewhere. You are now addressing them, are you?

Senator Collins: The Senator from Bastrop has lived down there where they vote anti-prohibition all the time, and is probably more familiar with negro camp-meetings than I am, we don't have them in my country, I don't know anything about camp-meetings, and I do not attend them.

Senator Page. The Senator talks like an elder exhorting down in my country.

Senator Collins: Well,—you have a mighty good elder down there if he can say anything like this.

Senator Bee: Mr. President, I have nothing to say about the argument of the Senator from Jefferson, but this Senate is sitting in solemn judgment on the Governor of the State, and I trust that the galleries who have come here to listen will remember that this is a court and not anything else. So far as the Senator from Jefferson is concerned, that is his business, of course, I have no criticism.

Senator Hudspeth: Does the Senator yield?

Senator Bee: I yield.

Senator Hudspeth: Don't you think that the Senator is exhorting them to come to the mourner's bench?

Senator Bee: No. sir, I do not think the Senator is exhorting them to come to the mourner's bench. This is a solemn occasion. I protest against any demonstration from the galleries or the floor of the Senate either.

Senator Collins: Well, gentlemen of the Court, I did not—

The Chair: Just a moment, Senator Collins.

Senator Collins: I did not intend to make this a matter of levity, it is a serious matter with me, but when they begin to nag, I nag back.

The Chair: Will the Senator from Jefferson yield to the Chair?

Senator Collins: I yield.

The Chair: Let's have order, but let us all down in the chamber observe the same character of order that has been observed throughout the progress of the trial. The Senator from Jefferson.

Senator Collins: Mr. President, and gentlemen of the Court, so much for the argument that we ought to be lenient. What is the extenuating circumstances that would make me be lenient? If I didn't think that the plain letter of the Constitution prescribed what measure of punish-

ment I should mete out here, what is the extenuating circumstances in this case to cause me to be lenient, or to cause you to be lenient? I do not agree with my friend from DeWitt, the Senator from DeWitt, upon his construction of what is meant by "cannot hold an office of honor, trust or profit under the State of Texas." I do not think it goes as far down the line as he seems to contend, that it would disqualify a man from practicing law. I do not know, however, that a man ought to practice law when he will put a trust fund in the bank to await the decision of a court and when the other interested party does not know anything about it, he goes and draws that money out. If the Constitution went to that extent, I don't know that I could say, as a member of the bar of Texas, that he ought to practice law in Texas. But I do not believe it goes that far; I do not believe that a man charged with the high duties and functions of protecting the State's money, who would take the State's money and pay his own note with it, ought to practice law. I don't know, as a member of the bar of Texas, that I could put my hand on my heart and say that he ought to practice law in Texas. But I do not think the Constitution goes to that extent; I don't think it is susceptible of any kind of construction that will carry it to that extent. But, gentlemen, let us direct our attention—time is going on and others have to talk upon this—let us direct our attention to the plain constitutional provision and what our duty is. I say that independent of the Constitution there is nothing to cause, nothing to appeal to our clemency, independent of the constitutional provision that is prescribed here, there is nothing to appeal to mercy, there is nothing to appeal to clemency, there is nothing to appeal to leniency under the facts of this case. But I say even if we wanted to, the Constitution would not permit us to prescribe a less penalty than that embodied in the majority report here.

Now, let me call your attention to the constitutional provision of the United States and the constitutional provision of Texas. It was said on the floor of the committee in session yesterday—day before yesterday—when we had a meeting, it was said that the Constitution of the United States was the father of all constitutions. That was very well said. I believe that all the other constitutions have very largely patterned after, probably written with the knowledge and in view of the provisions of the Constitution of the United States, and it may very well be regarded as the parent of all other constitutions and upon which all other constitutions are based. But let me read you the provisions of the United States Constitution upon the articles of impeachment, upon the sections of the impeachment, judgment in cases of impeachment; I want you to see how nearly alike our Texas Constitution and the Federal Constitution are upon this particular question:

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

That is the Federal Constitution. Let us see how clearly alike, nearly like that, is our State Constitution. Here is the provision of our State Constitution; the makers of our Texas Constitution seem to have had the Federal Constitution lying open before them when they wrote the Texas Constitution; evidently they knew what it was, they were sages, they were the peers of any men who have ever sat in council in Texas, and they knew the Federal Constitution, and for some reason they modified the Federal Constitution and changed some of the words in our Texas Constitution, and, in my judgment, in my candid judgment, they gave it a meaning, an entirely different signification. Here is the Texas Constitution:

"Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial, and punishment, according to law."

Now, gentlemen of the Court, it is almost verbatim ad literatim a copy of the Federal Constitution, except that they changed the words, "shall extend no further than to re-

moval from office and disqualification from holding office" again, and changed to "shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State."

Now, why did the sages who wrote our Texas Constitution make the change? The Senator from DeWitt, in his very able discussion of this matter this morning, cited you to the precedents under the Federal Constitution and while it would not be *stare decisis* in Texas, stil lit would be strongly persuasive, for that august body, the Senate of the United States, had once construed that provision, and while we would not be required to follow it in Texas as *stare decisis*, nevertheless, it would be strongly persuasive of the proper construction of the United States Constitution. But the Federal Senate has never construed the Texas Constitution. In the Pickering case, they seem to have construed the Federal Constitution where it says that the judgment in impeachment cases shall extend no further, etc. They seem to have placed the construction upon that that they could divide the two penalties, and that they might assess the one without the other, they might remove him from office without disqualifying him; and in Judge Pickering's case they so did. It does not appear, however, in the trial of that case that anybody objected, and, my fellow Senators, we do things here every day contrary to the rules of this body, and they are done by common consent or by unanimous consent, as we express it here on the floor of the Senate; we do lots of things the rules would not permit us to do.

Senator Bailey: Does the Senator from Jefferson yield?

Senator Collins: I yield.

Senator Bailey: I do not want to interrupt you, Senator, but do you think that in a case of this magnitude, comprising nearly a year—part of one year and over into another—there would not be discussion and objection to features of it in any case, Senator?

Senator Collins: There possibly might have been, Senator, I don't say no, I don't say there wasn't—like the negro says, "I ain't saying a thing," there might have been a discussion on every question. But they finally removed him from office. Nevertheless, that did not interpret our State Constitution, neither did it give us a precedent to guide us in this matter. Our State Constitution says that the judgment in impeachment cases shall extend only to removal from office and disqualification from holding office in the future. I drew the distinction before the Committee, and the genial Senator from DeWitt almost agreed with me at the time, he was almost persuaded; when I drew the illustration or comparison, I said there was a wide difference in saying to you, that you may go, but you shall go no further than the University, and saying to you, you shall go—you may go, but you shall go only to the University, and, in my judgment, I speak but as a country school teacher and not as a lawyer, not as a man who is well acquainted with the numerous impeachment trials both before the House of Parliament and before the various legislatures of this country, and I say to you it is a rule of construction in the English language that where two words are joined by the conjunction "and" that whatever follows or preceedes them relates equally to them both. Now, the word "only" in that sense, my friends, is intended as a definitive term, it defines the punishment we may mete out, it is inclusive and exclusive; it includes the punishment we may mete out, it excludes every other punishment. I do not believe we could punish the Governor, I do not believe we could make him pay the costs of this impeachment trial, I do not believe we can reprimand the Governor, I do not believe we can do anything more than the Constitution prescribes, I do not believe we can do anything less than the Constitution prescribes, because that word is a definitive term; it defines what punishment we may mete out, but we cannot do any more nor any less. Gentlemen, if I say, "You may go, but not go further than the University," I leave you free to stop anywhere this side of the University, and when I say the Constitution of the United States says you shall go no further than removal from office and disqualification from holding office again, I say it leaves it open to the United States Senate to stop anywhere short of that. But when I say,

"You shall go only to the University," it limits your destination, it limits your journey, and you cannot go any further or stop this side, and the makers of our Constitution for some reason changed the verbiage of the Federal Constitution, they took out the words "no further than" and wrote in "only to." Now, why was it? Well, I say, they had the judgment in the Pickering case before them, it is a reasonable deduction, it is a construction the courts of this country and the greatest lawyers of this country have put upon law, that whenever a law has been adjudicated by the courts of the country and the Legislature in a subsequent re-enactment of the law embodied the same words and the same thought, it carries with it the same words of the decision, it is adjudicated. Now, the makers of our Constitution knew that rule of law also, they knew the Senate of the United States had adjudicated once the provision of the Federal Constitution, that the judgment should go no further than the removal from office, and disqualification from holding office again, and the makers of our Constitution said, "Look here, that leaves too much latitude to anybody to say in a matter of this kind, and I think that we ought to make some change in the verbiage there." They probably had the Federal Constitution before them, presumably with a full knowledge of the Pickering case, they left out the terms, "Go no further than that," and wrote in, "Extend only to."

Now, gentlemen, shall they extend only to removal and disqualification from office? Disqualification and removal are joined by the conjunction "and." I say everything that goes before and everything that comes after, those two terms conjointly united together by the conjunction "and," are equally modified by its terms, and you cannot escape—from my knowledge of English grammar, I say you cannot escape the fact that the writers of our Constitution intended to leave us no discretion in the matter.

Why, they state that they have a precedent from California; it is stated they have a precedent from California, there was a judge removed in California. They refused to vote—and the California Constitution is almost verbatim like ours—they refused to vote to suspend him from office for a period of six months, but they did vote to remove him from office without the disqualifying clause of the Constitution. Now, that is cited as an authority here. It does not seem that there was any discussion as to whether or not that could be done. It may have been done by unanimous consent, as we do, as we do things here in the Senate, when we have a rule which prevents its being done only by unanimous consent. It might have been done without objection, and I say to you very frankly here, if we were to do this, in all probability there is no court in all Texas or out of Texas that could question our act. We might be supreme in our interpretation of the Constitution upon this important matter, no higher court has a right to look into or adjudicate the questions we are passing upon at this time, and if we by unanimous consent and without objection were to agree to leave off the last part of the sentence, gentlemen, I don't know that it would ever be called in question, and it might go down like the California case as a precedent, but a precedent merely, because unanimous consent was given and no objection was raised. But, I say that, taking the letter of the Constitution here that was given to us which has prescribed the punishment for this offense for which the Respondent was guilty in this case, we cannot do less than remove him from office and disqualify him from holding office. I will venture the assertion that no Senator upon the floor of this Senate but when he voted thought it was carrying that punishment. I will venture the assertion, that at the time he voted upon the articles of impeachment last Saturday, that every man of you, thought, as counsel for Respondent said yesterday, he thought it carried the full penalty, and he frankly confessed before the commitee that from the reading of the Constitution that he thought it carried both; and you all thought so when you voted, and I thought so then and think so now. I am not trying to mince things here today. But it is deplorable, it is a harsh judgment. "Whatsoever a man soweth, that shall he also reap." We members of the State Senate of Texas did not sow this harvest, we members of the Legislature did not plant this crop that the Governor of Texas is

about to reap; we are not responsible for his undoing, the good citizenship of Texas is not responsible for his undoing, we did not get him into this predicament, and I am not going to violate my constitutional oath to try to get him out of it, either. I am going to follow my conscience and mete out the punishment as far as my vote goes, prescribed by the Constitution of Texas, not a word more. I couldn't if I would, and I wouldn't if I could stop short by unanimous consent, I wouldn't do it, because I think the Constitution has blazed out the way and that no discretion is left to me under my oath in the trial of this case, but to mete out the penalty prescribed by the Constitution.

Gentlemen of the Court, there are no extenuating circumstances in this case. He did it, he did it, we didn't do it, the people of Texas didn't do it! He is presumed to know the law, whether he does or not. He violated the law, the presumption is that he violated it knowing that he violated it. He did it, we didn't do it! The punishment is harsh. Gentlemen, I do not fear his running for office again, as was intimated here this morning. I have no fears for that, God knows I wouldn't care if he ran for office one hundred times; and if the people of Texas want to elect him, that would be their business, and not mine. I have no fears about that, that is not what is impelling me in the words that I am speaking to you, and the vote I shall cast upon this occasion, and that does not enter into my verdict, whether or not he shall run for office again, I am only trying to do the duty as the Constitution of Texas has prescribed for me, and that is what I am going to do. Nature has done a great deal for the Respondent in this case, he is a brilliant man, he has achieved greatness, he has done wonderful things in Texas. I have a right to assume that with his brilliancy, with his natural intellect, with what nature did for him, I have a right to assume that he knew the Constitution and laws of Texas. He did know them. We try men in our courts every day who have never looked inside of the Constitution, who have never looked inside of a law book, and who cannot read and write English, and we send them to the penitentiary for life and sentence them to death under the laws of Texas, when they can't even read the English language, presuming that they knew the law; and I presume that the great Governor of the great State of Texas knew the Constitution and law and knew the provisions thereof which he violated. Upon that presumption, as for myself—others may do as they please—you may vote as you please—I will have my opinion about whether or not you showed the white feather when you voted. I will vote my opinion, you can use your own judgment, you are the keeper of your own conscience, you will have to go home and face your families and people. So help me God, I couldn't go home with a clear conscience and face my little children at home whom I shall see next Saturday, if I didn't under my oath mete out the punishment that the Constitution of Texas prescribes that I shall mete out. And I will not waver. But it has been intimated here on two or three occasions that if we didn't do so and so, somebody would be in our districts after us. I have heard that sentiment crop out two or three times. Is my district after me? They are always after me, but so help me God, they cannot put their finger on a book or page where I ever came short of doing my full constitutional duty. I don't care anything about my office, they may have my commission now if they want it, I don't care anything about it, and I don't care how many of them hound me if I ever run for office again. But between me and God I have made this covenant upon this occasion, that whatever happens and whatever goes I give my heart and my sanction to this majority report of this committee, and I ask you gentlemen of this Court to support it and adopt it.

The Chair: The Senator from El Paso desires to speak, I believe.

Address of Senator Hudspeth.

Just a few moments. I shall make this speech from the desk of the Senator from Walker, but I want it understood that it is not the speech of the Senator from Walker.

Gentlemen, after listening to the able exhorter from Jefferson I want to state that I thought on last Saturady evening when this unfortunate matter was before this Senate

and the Senate voted to impeach the highest official in the State Government that the matter as far as the guilt or innocence of the Chief Executive of this State was ended, but it seems that the Elder from Jefferson—and I say that in all kindness—has sought to reopen the matter, and there must be a doubt in his mind and conscience as to whether or not the Respondent is guilty of the charges preferred against him by the House of Representatives. In fact, my Irish friend from Jefferson reminds me of a speech that was attributed to one of the best friends I have on earth up in Hunt county where he was addressing a Confederate Reunion, and his remarks on that occasion were very pointed and his statements concerning the Lost Cause were rather vitriolic, and when he had concluded, one of the ex-Confederates says to the other, "John, I believe Senator Bailey is mad about that darn war yet"—and I am afraid my friend, the Senator from Jefferson is still mad about this unfortunate controversy. I want to say to him, Mr. President, I may be showing the white feather on this occasion; if I am, it is the first time in my life that I have ever shown the white feather, according to the judgment of the Senator from El Paso. I voted, and it was a painful duty to me, I say, Senator, to have to vote to convict a Democratic Governor in a Democratic State. I want to say to you that I have had many trials and tribulations in the short life that I have led. I want to say to you, Senator from Jefferson, that I have met the clod and stubble as an orphan boy up at home out in Western Texas, but I want to say to you in all kindness that I rejoice at the downfall of no man. I want to say to you, Senator from Jefferson, when you say that mercy has no place in this assemblage, I want to say to you, Senator, that when any man so far divests himself of the milk of human kindness that he has no compassion on a man who had to sit here and be branded and go down through life as a man unworthy of the confidence of the great people of Texas, I don't think you meant it then, I can't think you mean it now. I can't think, Senator from Jefferson, that you would stand before your colleagues in this Senate, who love you, one of them especially, the Senator from El Paso, and say to this Senate that there is not a drop of the milk of human kindness in you. I can't think you believe it, and I want to throw the mantle of charity over you at this time and say that the words that you uttered are unworthy of the great heart that I heard stand here on this floor and plead for the man who makes his living by toil and the sweat of his brow, a man who has stood here on numerous occasions and pleaded for the unfortunate people of this State—to stand here and say that because a man may have done wrong—and I think he has, or I should not have cast the vote that I cast here—to say that although the redhanded murderer or the rapist may receive clemency, you by your vote put the ban upon this man and make it forever impossible for the great people of Texas, if we have made a mistake here, to right that. Do you mean, Senator, do you mean to say that the people, from whom all power is given, have no right in an instance of this kind, if we, the Senate of Texas, if it should develop—and I want to say to you, Senator, that the passions of the hour are running high; I have voted a conscientious vote and I feel in my consciousness that I have done my duty, but you say that, though we may have made a mistake here on Saturday evening, that the people of Texas, in whom is lodged the supreme power to say who shall be officials in our State, shall be denied the privilege of righting that wrong; that is what you say. I want to say to you, Senator, that I shall vote for the minority report, although I have received a stack of telegrams today telling me that if I vote for the minority report it means the end of my political career. It may be; but if a man, Mr. President, has got to stultify his conscience in order to hold office in this State, the Senator from El paso is now singing his swan song. You can influence the passions of the people to such a pitch that some of them, Mr. President, would demand that the body of Jim Ferguson be rended in twain and handed out to the cayote wolves on the plains of Western Texas. But I say to you there will come a calm hour in this State that the men who vote for the minority report, in my

judgment, although the Senator from Jefferson does not at this time give them credit for sincerity, the people of Texas will accord them a sincere purpose and an honest heart and an honest conviction in time to come.

Now, I have not gone into the law as my friend from DeWitt and other Senators here, except this far; that it was contended by the Senator from Jefferson that our Constitution was modeled after the Constitution of this great Republic. He admitted in one voice that the Constitution of the United States would permit a division of this question, and he went on to state in the other that our Constitution was modeled after that Constiution and the wise framers of the Texas Constitution had the Constitution of the United States before them when that sacred document was drafted; and another statement, he made this significant statement, that they certainly had the Pickering case in mind. If I caught the statement of the Senator from DeWitt correctly this morning he stated that the Pickering impeachment trial took place in 1891—

Senator Lattimore: 1803.

Senator Hudspeth: 1803. Then I was mistaken about that. I caught it that it was in 1891, and our Constitution—if I was correct, our Constitution having been framed in 1876, they could not have had that case in view; but I may have been in error; I sat here listening attentively, and that was my recollection. Now, it is true that four-fifths of this Senate voted to convict the Governor of this State on five different counts. I voted to convict him on three. I gave him the benefit of every doubt. I have no criticism for the Senator from Jefferson or any other Senator who voted to convict him on nineteen counts. But I say to you, Senator, that I asked the President of this Senate before I cast my vote—while it would not, I want to state to you frankly, it would not have been any guide to me as to how I should have cast my vote as to what punishment would be meted out by this Senate to the Respondent. but before I cast my vote I felt that the Senate of Texas, if it was possible to ascertain what degree of punishment might be, should know as to what the Senate of Texas thought of the punishment that should be meted out, and I had this very matter in mind when I asked the President of the Senate before I voted—and I want to state again candidly that I should have voted for conviction, although I felt it was mandatory upon the Senate to inflict this harsh punishment that you have exhorted this Senate so strenuously to inflict, but I felt that the Senate of Texas at that momentous hour ought to know how the Senators of Texas felt as to what punishment should be meted out to him. I say to you, Senator, that in my judgment, you cannot put upon the brow of Jim Ferguson a more severe and harsh punishment than to take away from him the office the great Democracy of Texas twice has given him. The people of Texas invested the Respondent with this mighty office, possibly over your protest, but a majority of the Democracy that rule and select officials of this State selected him for that high position, and now the Senate of Texas in the solemn discharge of their duty has seen fit to take it away from him; and I say to you, Senator, that in the judgment of the Senator from El Paso, I had rather be in my grave today than to have an office taken from me that the Democracy of my district had given me. If you in your mind and heart at this solemn hour—you may not regard it so, Senator, but in all the days of my life I want to say to you I have never in my young manhood, in my immature youth, never in my life in my calm moments, the worst enemy I have on this earth could I wish him the punishment that has been or that is proposed to be meted out to the Respondent by the minority of the Committee. And I say again, in all the rest of the days of my life I shall look back upon that occasion as one of the most painful; I shall look back upon the duty that was forced upon me and keep my self respect as one of the most painful, I trust, that I will ever be forced to confront, although I live to be as old as Methuselah. That is the way I feel about it, gentlemen; that is the way I feel about it. I know how my constituents feel; I know that the majority of them today want the Respondent, as was stated so ably by the Senator from DeWitt, to be placed in the same class as the heathen Chinese. But I shall not yield to that sentiment. I may yield my political future, but I shall not yield to a sentiment that

proposes to bayonet a man after he is lying prostrate upon the ground, when, in my judgment, the punishment that the minority propose to inflict is as severe as any man on this earth could possibly ask for under the testimony and the facts of this case. That is the way I feel about it, gentlemen. I am not going to say that the men who vote this majority report are stultifying themselves, because I have it not in my heart to believe that. I have never yet been so intense a partisan that I could not accord to men who differed with me honesty of purpose; I trust I never shall. And, gentlemen of the Senate, this is possibly the last speech that I will ever—or the last statement that I will ever make on the floor of this Senate, but I want to say to you, although you know my convictions on one side of this great moral question, when the time arrives, Mr. President, when the time arrives that the Senator from El Paso cannot accord to the men on the opposite side of this great question, or any other question, honesty of purpose—and I say this in all kindness to my friend from Jefferson,—when the time comes that I shall make the statement that men who, I believe, are voting their honest convictions, although they are voting for the minority report, the Supreme Ruler being my witness, when I arrive where I cannot accord to them honesty of purpose I will resign from this Senate and go back to the people from whence I came. I say it is unworthy of the great Senator, unworthy of a man that has stood here and pleaded for the man that is down in the ditch, to make the statements that have just fallen from the lips of my friend from Jefferson, and I believe, Mr. President, in his calmer moments he will regret the pointed thrusts that he has made at his colleagues who took a different view. I know he is honest; no man has ever doubted that; and I can only attribute the intemperate remarks that have been made here by the gentleman from Jefferson to have been made in the heat of argument.

Going back to the question under consideration, gentlemen of the Senate, there is no doubt in my mind that this is a divisable matter, and I shall ask the President of the Senate, in whom I have the utmost confidence as to his fairness and have expressed it on a thousand different occasions, and I shall ask for the question to be divided, and the Senate can either inflict, as I have stated, the harsh punishment of taking away from this man the office the people have given him or they may inflict the punishment so strenuously urged by my friend from Jefferson, to disfranchise him. You say, Senator, you are not afraid of him in politics. I am not. Then, if you are not afraid for this man to go before the people, why do you insist upon this punishment that the majority report calls for? Why do you ask that this man be placed in a class entirely by himself? I do not believe there is another man in Texas today, gentlemen, I don't believe there is another man that has been bereft of his office where there is no pardoning power on this earth to restore it. I believe if you adopt the majority report here and say that Jim Ferguson shall never hold another office in this State, that possibly he will be the only man in Texas for a hundred years that will be denied the privilege of asking the suffrage of the people of the State that gave him birth. As I stated a while ago, the redhanded murderer may be convicted and given a life sentence in the penitentiary, yet the pardoning power is vested in the Chief Executive to restore him to his citizenship; but there is no power under the sun to right this wrong, if it is a wrong, as the minority report, the men who have framed it and stand behind it, believe it to be, except as stated by the Senator from DeWitt, through a constitutional amendment, and the Senator from Jefferson and every other Senator on this floor knows that this is impossible, a constitutional amendment by the people to restore this man, as it would be to fly to the moon. That is all, Mr. President, I have to say at this time. It will all be discussed by the Senator from Tarrant, I understand, and the Senator from Bexar. I felt that I must state my position upon this matter. I feel that every citizen of Texas ought to be satisfied with the verdict to take the highest office within the gift of the Democracy of this State, they ought to be satisfied and not pursue this man relentlessly and with venom and vengeance unworthy of a Texan and American citizen, and not put upon the wife of his bosom—Ah! I want to say to the Senator from Jefferson, you stood here a while ago as bold as a lion and stated that this was not a

case where justice should be tempered with mercy. You could not have meant that. A man with the dear wife and the little loved ones that cling around you, the tendrils of their affections cling around your heart like the vine around the giant oak. You could not have so forgotten yourself as to feel that in placing the brand of disgrace upon the brow of Jim Ferguson that you were not also inflicting it upon the dear wife and two dear little children that he loves as dearly, no doubt, as you love yours. That's all I have to say, Mr. President.

The Chair: The Senator from Tarrant.

Address of Senator Lattimore.

Mr. President and Gentlemen of the Senate: I do not believe that any man ever felt more keenly the solemnity of the passing hour than does the Senator from Tarrant feel this. I want to congratulate my brethren of the Senate that for four long weeks they have taken part in this exceedingly extraordinary, thank God, situation, with so little of heat, so little of friction, and so much of courtesy and so much of forbearance and such a splendid exhibition of the spirit that ought to characterize the Senate of Texas. If I may, Mr. President, I want to pay special tribute to my brethren of the Senate who, in the crucial hour of voting upon the question of sustaining these charges, have put from them those ties of friendship and those ties of personal obligation and have held before them the single standard of devotion to their duty and obedience to their oaths as Senators upon this floor. I know that many men have voted contrary to their own feelings, and I say, Mr. President, that it marks a high tide in the kind of men that we ought to have to represent an Imperial State like this, when men can rise superior to their own personal feelings and their own individual desires and vote with an eye single to their duty, to their State, to their consciences, and to their God. I shall not call in question, unless I be betrayed by the feebleness of my speech this afternoon, the motives of any man upon this floor. I realize, however, that we do do that unconsciously, for my distinguished friend, the Senator from El Paso, in presuming to gently and lovingly chastise the Senator from Jefferson, fell into the same error when he said that no man on the floor of this Senate ought to permit himself to vote here in a spirit of vengeance, no man ought to permit himself to vote in a desire to inflict vengeance upon his fellow man, and that a man ought not only to remember the unfortunate Respondent in this case, but he ought to remember those who are dependent upon him, those who are near and dear to him. We say things like that, Mr. President, out of the humanity of us, for we are all human; and yet my distinguished friend from DeWitt, also intensely human, says we ought to refer this question as to the ineligibility of this Respondent to the people. I am sure, Mr. President, that if the Senate of Texas or a majority of them feel that they would not be true to their oaths and feel that they would not be true to their positions and to their duty if they did as my friend from DeWitt suggests and referred this to the people, I am sure that he would not mean any reflection upon them whatsoever. I am sure that when the judge stands to pass sentence upon the unfortunate prisoner, that that judge would feel it to be a reflection upon him for any man to come before him and say, "Sire, I prefer that you not impose the sentence of the law; I prefer that you leave this to the judgment of the people." I am sure, Mr. President, that the Senator from DeWitt does not mean to say that if it is the judgment of a majority of the Senate that it is their duty under the plain language of the Constitution, which compels them to follow the language of the law as written, that they are recreant to their trust.

Mr. President, and gentlemen of the Senate, it appears to me that we ought to try to get at the intent of the framers of the Constitution; we ought to try to understand what the language that they wrote means; we ought to make up our minds as to what our duty is under that language. Then we ought not to want to refer it to the people, but we ought to stand here and say that, "As far as I am concerned, I am going to do that and do it myself and do it now which the language of the Constitution impels and compels me to do." I do not know, Mr. Presi-

dent, whether the framers of our Constitution had in mind when they framed our Constitution the language of the Constitution of 1776 and the decision of the High Court of Impeachment in the Pickering case in 1803. There is no better settled rule of law and construction in this State, however, than this, that when there has been a legislative enactment and when there has been a subsequent judicial interpretation and then another legislative act upon the same subject, that they will consider that the second legislative act was had in reference to the judicial interpretation put upon the first, and the courts will take that into consideration in construing the second act of the Legislature. The Constitution of the United States was written by the hand of Thomas Jefferson, that hand that swept the political heartstrings of every loyal son of Democracy in the last one hundred and fifteen years. That Constitution said that punishment in cases of impeachemnt shall not extend "any further than". In 1803, Mr. Pickering, a Justice of New Hampshire, was tried by the Senate of the United States. He was at that time insane; he was at that time in such an enfeebled bodily condition that he could not be brought to the bar of the Senate; when they sent their process for him the return upon that process certified that his condition of health, his condition of mind, was such that he could not be brought to the bar of the Senate without seriously jeopardizing his life, and the Senate of the United States proceeded to render a default judgment without hearing all the evidence in support of the articles of impeachment, and merely said that this man, who is tottering on the brink of the grave, this man who will in a few short hours stand in the presence of his Maker and answer for the sins committed in the body, this man shall be removed from office. They went no further. The question was not raised whether they should go further. No form of dual judgment was submitted, nothing further was involved.

Senator Hudspeth: Will the Senator yield?

Senator Lattimore: Yes, sir.

Senator Hudspeth: Senator, according to your contention, whether the question was raised or not, it would have been the duty of the Senate of the United States also to have rendered judgment debarring him forever from holding office, if they had followed strictly the Constitution as you propose.

Senator Lattimore: Well, I will come to a discussion of my views on that, Senator, in the connected order in which I want to present, as briefly as possible, my views. For us to speculate as to what the judgment of the United States Senate would have been if the question had been raised, would be but idle speculation. Many and many a court, many and many a position, many and many a Senate has taken action with consideration and for purposes and influenced by things which do not appear in the record. In 1845, when Texas came into the United States and the original Constitution of Texas was written, it was written by the hands of college graduates and men who put into that Constitution that which they intended to put into that Constitution. They wrote in there that punishment shall extend "only to" removal from office and disqualification from holding office. Now, my distinguished friend from DeWitt, admiration for whom always wells high in the breast of the Senator from Tarrant, says if they had wanted to be specific they should have put the word "only" in another place, for he says, if I say, "you shall only go to the Driskill Hotel," and I wanted to make that specific I would have said, "you shall go to the Driskill Hotel only." Now, the Senator from Tarrant does not claim to be any such master of correct English nor any such master of correct rhetoric as my distinguished friend erstwhile from Virginia; but the Senator from Tarrant is unable to see how, if a contract or a law or an agreement says "You shall only go to a certain city," that it is less specific than if I said, "You shall go to a certain city only." It may be the Senator from Tarrant is not correct, and if so, the Senator from Bexar, I am sure will enlighten him. But the framers of our Constitution said, "The punishment in cases of impeachment shall extend only to removal from office and disqualification from holding office." However, they went further and said

this: They wrote in the latter part of that same Constitutional clause this: "A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law." That is in the same clause in the Constitution. Following that, we have enacted in this State a code of laws, and we cannot try a man in this State for any offense except that offense be written in the statutes and its punishment be affixed. We can scarcely imagine any kind of crime committed in this country for which there has not been prepared and to which there is not affixed a punishment. I take it that that was put there for a purpose. It was the intention of the Legislature—of the framers of the Constitution in writing that clause in the Constitution to say: "The punishment for impeachment shall extend only"—to what? "removal from office and disqualification for holding office." I say, my fellow Senators, that you cannot go beyond that, if there be any beyond; you cannot go this side of it if there be any this side. Anything else than that is punishable by law, is subject to indictment, is subject to a hearing before a court and a trial in a court. Anything else conceivable in the mind of a Texan except what? Impeachment. Why, my friend from DeWitt, and to a certain extent my distinguished friend from Jefferson, draw some imaginary boundary line and say that the intent of the framers of the Constitution was to say that you may start from here, from now, from nothing, and go on up to a certain outside boundary line, and the outside boundary line of the punishment for impeachment shall be removal from office . and disqualilification for office. But, Mr. President, a proposition of that kind to my mind is absolutely untenable and unthinkable. Why, my distinguished friend sitting here on my right, the Senator from El Paso, just gave utterance a few moments ago to an absolute denial of that proposition, in my mind, when he says that in his judgment there can be no greater punishment than that. Why, a man said, "I would rather be hung than to be removed from office and disqualified." Another man might say, "I would rather go to the penitentiary for thirty years than to be removed from office and disqualified." In other words, if you are going to say that removal from office and disqualification for holding office is the outside limit and that it embraces all this side, and that you may inflict upon a man anything that is this side of that boundary limit, then some man might get up on the floor of the Senate and say by a simple resolution or motion, "I move that this Respondent be hung." or "I move that this Respondent be punished by confinement in the penitentiary." The answer to that would be, my dear sir, "You cannot inflict upon that man this punishment, because why? Because in obedience to the other constitutional mandate the Legislature has fixed the punishment for murder, fixed as punishment the death sentence and fixed as punishment confinement in the penitentiary." It was suggested by some gentleman in the committee that you might punish him by removing him from office for thirty days or by removing him from office for sixty days, and I believe no less a distinguished man than my friend from DeWitt said, "You may punish him by imposing a fine or by assessing the cost of this proceeding against him." Gentlemen, I dissent absolutely from that. Gentlemen of the Senate, I say to you that the language of our Constitution is absolutely exclusive of anything else that a man might choose to claim beyond that or anything that a man might choose to claim less than that, because when you say it is exclusive you state that to the whole Senate and allow them to float on an expedition and decide according to the individual views of the Senators, to decide whether a certain punishment that might be desired to be inflicted upon this unfortunate Respondent was less or greater, and if a majority of the Senate said that hanging was less, in the opinion of the gentlemen who say that removal and disqualification from office is the outside limit, they should hang him. No man in the world could long give credence to a philosophy of that kind. No man, it seems to me, with a logical mind could long give assent to a proposition of that kind. No, Mr. President, and gentlemen of the Sen-

ate, it was not the intention of the framers of the Constitution to inflict upon a man worthy or unworthy of impeachment any punishment which can be inflicted upon a man for an offense which is indictable and punishable under the laws of this State. For this high crime—for this grave misdemeanor, the framers of the Constitution intended to do what and to say what? They intended to say this: that if in the judgment of two-thirds of the members of the highest law-making body of the State of Texas, the Respondent is guilty, then he must be removed from office and not permitted to hold office. That is the punishment, and that is the only punishment. You may consider it graver, you may consider it less grave; you may consider it more serious, or not so serious, as you please. The question, gentlemen, is not what I want or you want to do; the question is not what I may feel like doing or what any other man may feel like doing. The question is: What is the —"Thus sayeth the Constitution, and thus sayeth the law." My distinguished friend from DeWitt cites a precedent, and I want to say to you gentlemen that I am a lawyer of ordinary ability; of course, I might not permit anybody else to subscribe to that doctrine, but it is absolutely true, and I want to say to you, as was said by a distinguished friend of mine in a little treatise on that subject, that more evils have been done and more wrongs have been perpetrated under the name of precedent than under any other one single theory that is known to the law. A court decides a case upon a given state of facts; another court in another jurisdiction, upon a different state of facts, attempts to apply that law and edges a little further away; another court in another jurisdiction edges a little further, and by and by that is cited as a precedent, which has no application. Now, my friend from DeWitt cites the Pickering case as a precedent here under a Constitution the verbiage of which is absolutely different from ours, under a state of facts when, for all we know, that Senate may have been moved by a feeling of the infirmity, mental and physical, of the Respondent in that case. He cites the Humphreys case in 1862, and cites the case from California to which I shall invite my friend's attention in a moment. The Humphreys case, the second case of conviction in the National Senate, cannot be cited here as a precedent. In that case the presiding officer held, over the vote of the Senate, that the question is divisible. I am struck with the argument of Mr. Collamer in the Humphreys case. Mr. Collamer says: "Mr. President, if the question be divisible, if you put this question, Shall the Respondent be removed from office? and then if you put the other question, Shall the Respondent be disqualified from office? and the vote be in the negative as to the first proposition, where will you be on the second proposition, Mr. President, if a majority of the Senate under the motion is impaled upon the dilemma, either horn of it, if the question be divisible?" No question is divisible unless both parts of it, both segments of it or either segment of it can be stated and voted upon independent one of the other. That is as true absolutely as I am standing on the floor, and Mr. Collamer said: "Mr. President, if the question be divisible and you put the first one and the vote be in the negative, what about the second one?" And the Chairman could not answer the question and referred it to the entire Senate and the entire Senate upon the amendment offered by Mr. Trumbull of Illinois, voted that it was indivisible, and thereafter, I think, on the motion of Mr. Davis of Kentucky, separated them and voted upon them. I have before me the proceedings of the National Congress in 1862 in June, at which that extraordinary action was taken. But my friend from DeWitt—and I never can think of him without thinking of the Old Dominion; I never can think of him except I think of all that line of men and women up there who were the pink of chivalry and the perfection of loveliness—my friend from DeWitt cites the Hardy case from California and says that the Hardy case was under a Constitution exactly similar in verbiage and language to ours, and that is true; but my friend from DeWitt unfortunately reads from Foster on Impeachments, which he has open there on his desk before him. In other words, he reads an interpretation of a Connecticut lawyer—and that is what Mr. Foster was—on the actions of Mr. Hardy, who was a California Democrat—an interpretation put upon the actions of a California Democrat in 1862 by a

Connecticut Republican. My friend from DeWitt, who is of the South, a Southerner, reads from Foster, and stated from his desk this morning that Judge Hardy was charged with corruption and malfeasance in office and that if the Senator from DeWitt had been in the California Senate he believed he himself would have voted for the extreme penalty in that case. Oh! I appeal from the Senator from DeWitt stating conclusions of Mr. Foster, a Connecticut Republican, I appeal to the Senator from DeWitt with the facts before him. What were the facts? Mr. Hardy—

Senator Bailey: Will the Senator yield?

Senator Lattimore: I yield.

Senator Bailey: Senator, why don't you say all I said? I went on further and stated he was convicted of speaking disrespectfully of the Confederacy and Jefferson Davis.

Senator Lattimore: Yes, but I just wanted to call attention to that trial. I could not say all you said, because I haven't the power of language you have, Senator; it would be utterly impossible for me to do that—I am going to try to do it as best I can. The Senator from DeWitt, may be, will permit me to say that there were twenty-two charges against Judge Hardy, many of which did involve official corruption and malfeasance in office, and he was almost unanimously acquitted of about eighteen of them and he was convicted upon only one of them, and what was that one charge? My friend from DeWitt knows that he was charged with getting out with a party of friends and offering a toast to Jefferson Davis and Southern Confederacy. Would my friend from DeWitt have us to understand that if he had been in the California Legislature and a man had been charged with saying, "Hurrah for Jefferson Davis and the Southern Confederacy!" he would have voted for the extreme penalty in a case of that kind?

Senator Bailey: No. sir.

Senator Lattimore: No, no, my friend would have done as Merritt and as a number of the other Senators did in that case; he would have said that Judge Hardy was absolutely within his rights. But my friend from Bexar is to follow me and I want to call the attention of my friend from DeWitt and my friend from Bexar and any other man who relies upon this California case to this situation: that the proceeding in California in the Hardy case it was not a constitutional proceeding. Why do I say that? In California in 1851 this statute was enacted on the subject of impeachment; I read Sections 64 and 65 of the California statute and ask the attention of both my friend from DeWitt and my friend from Bexar to the language of this statute. I know that the Constitution of California was similar in verbiage to ours, but this proceeding, as I shall show you in a minute, was a statutory proceeding, under a statute, and cannot be cited as a precedent here. This is the language of the statute: "On the adoption of the resolution"—now, this is the resolution in regard to punishment—"On the adoption of the resolution by a majority of the members present and voting on the question of conviction or acquittal, the same shall be the judgment of the Senate. The judgment may be that the defendant be suspended and removed from office"—then there is your comma, that you lay so much stress on—"or that he be removed from office and disqualified to hold any office of honor, trust or profit under this State." Now, knowing these distinguished gentlemen as I know them, having confidence in their honor and their integrity and their willingness to stand up for the right, they would not have sought to give it as a precedent to the Senate of Texas had they known that was a statutory proceeding, under a statute which gave the California Senate authority to either remove from office and suspend him, or remove from office and disqualify him. Am I further justified in that statement—

Senator Bailey: Will the Senator yield?

Senator Lattimor: I yield.

Senator Bailey: But, Senator, independent of that, the Constitution of California was in force and effect at that time, with the provision in it that it could only extend to removal and disqualification, wasn't it?

Senator Lattimore: Sure.

Senator Bailey: Then why put it off on the statute?

Senator Lattimore: Because they

did. I am just going to show you, Senator,—and I don't want to make you squirm, but want you to listen. Now, here is the Hardy case, the proceedings from beginning to end, and I submit it to my friend, the Senator from DeWitt, and ask him to find a single reference to the Constitution in this transcript of the Hardy case. But listen: I find when they were getting ready in the preliminary proceedings, getting ready for this trial, on page 11, Mr. Campbell says, "This statute provides that the answer may be either oral or written. Of course, that is a matter entirely within the discretion of the Respondent"—no reference to the Constitution, but to the statute. I turn over on page 12 and find this: "The statute regulating proceedings in these cases provides that at the time and place" and so on. I go further down and find this from another man: "The statutory oath shall be administered," and on page 13 I find this by another Senator: "But our statute prescribes the mode of proceeding"—showing that they were going according to a statute and not according to the single lode star of the Constitution.

Senator Bailey: Will the Senator yield?

Senator Page: Will the Senator yield?

Senator Lattimore: I yield to the Senator from DeWitt first.

Senator Bailey: I don't want to sqirm and don't want you to dodge.

Senator Lattimore: I won't.

Senator Bailey: You won't take the position before the Legislature or anywhere else that the Legislature of California can abrogate the Constitution with a statute?

Senator Lattimore: No, sir, I don't. But if you take the record of a trial and find that the men who were conducting that trial throughout referred to the statute and referred to the statute again, and the statute gave them a right to do a certain thing that was unconstitutional, if you please, and they did that thing, wouldn't you believe that by their constant reference to the statute that they were acting under the statute?

Senator Bailey: Will the Senator yield?

Senator Lattimore: Yes, sir.

Senator Bailey: Wouldn't it be a more reasonable conclusion to arrive at that the Legislature of California recognized the Constitution of California when they passed that statute authorizing a lesser penalty than that prescribed by the Constitution?

Senator Lattimore: If we were left to presumption, Senator, it might be; but I have read to you the preliminaries, and now I want to turn over and read what was done when they decided the penalty, and the only thing that is said, and I challenge any man to find any other reference in that discussion of the penalty question or anywhere else I have been able to find in the transcript of the Hardy case. Here is what Senator Perkins said, and it is the only thing—this is on page 695 in the Hardy Impeachment Trial.

Senator Hudspeth: Is that a State case?

Senator Lattimore: Yes, sir. Senator Perkins said this: "I think that we can pass judgment now, as well as at any other time. Evening sessions are always disagreeable"—in that, the Senator from Fannin and I agree, I think—"usually somewhat disorderly—all the evening sessions that I have ever witnessed were. This is a matter of serious consequence. Our judgment in regard to this matter should be, I think, given in the day time." Now, listen: "The statute provides"—does he say the Constitution? No—"The statute provides that it may be one thing or another"—

Senator Page: Will the Senator from Tarrant yield?

The Chair: Does the Senator from Tarrant yield to the Senator from Bastrop?

Senator Lattimore: Yes, sir.

Senator Page: The Senator from DeWitt has directed your attention to exactly what I wanted to. I want to repeat, the Constitution of the State of California at the time of the trial was exactly in the same language as the Constitution of Texas.

Senator Lattimore: It was, Senator.

Senator Page: Don't you believe, Senator, that when that statute was passed the California Legislature believed that that Constitution provided that they could inflict either

one penalty or the other or both of them—else, why the passage of the statute in the face of the Constitution? If the Constitution of California says one thing and the Statute says another, which would you follow, Senator?

Senator Lattimore: Well, my reply to that would be, the thing suggested by the Senator from Bastrop, suggested itself to my mind as the reason why this statute was as it is. That may be the reason. But to cite the Hardy case here and say it was under the Constitution, when it was almost wholly, if not wholly, under the statute, does not seem to me to be fair.

Senator Page: Will the Senator yield further?

Senator Lattimore: Yes, sir.

Senator Page: If the Senator, then, admits the statute in the Hardy case was the construction placed by the Legislature of California on the Constitution of California, it is exactly what we are saying here about our Constitution.

Senator Lattimore: Yes, they said you could suspend him. I understand that the Gentleman from Bexar and the Gentleman from DeWitt say it is a necessary consequence of conviction that he be removed from office. That was not a necessay consequence under the California Legislature's construction of their Constitutional provision, because you could suspend him for ten days or thirty days or fifteen minutes. Now, that is not the construction that has been placed upon this in the Committee—and I am sure I violate no confidence when I say that out here in open conference.

Senator Page: The California Senate must have proceeded under the provisions of the Constitution and not under a statute, because if one or the other must yield, then the statute must yield to the Constitution.

Senator Lattimore: Well, I am saying this, Senator; that the record we have shows that it was strictly under the statute and that there was no reference to the Constitutional provision. If we were here trying a man under a statute, if that statute went beyond the Constitution, we would have up a different question; but we are here trying a man under the Constitution and under the Constitution alone.

Senator Hudspeth: Will the Senator yield?

Senator Lattimore: Yes, I gladly yield.

Senator Hudspeth: Mr. President, the oath a Senator takes in this State is that he will uphold the Constitution, and the presumption is that he will pass laws in conformity thereto. While I contend we have nothing but remnants left in Texas, still we take an oath that we will protect the remnants. Isn't it fair to presume that the Legislature in California when they passed this act took the same oath that the Legislature of Texas takes?

Senator Lattimore: I don't like to answer such propositions, but the Senator from El Paso and I voted last week for the passage of a bill for the relief of our drouth stricken friends in West Texas.

Senator Hudspeth: We stated we had great doubts about the validity of the Attorney General's opinion.

Senator Lattimore: Exactly, and that may have been the opinion of these gentlemen here. I am simply saying that the fact that a law is passed by the Legislature and is upon the books is no guarantee of its constitutionality. The Constitution is above the law. But what I was going to do was to call the attention of my friend from DeWitt to the fact that the Hardy case is not a precedent in this case here this afternoon, because it was conducted solely under the statute and the constitutionality of the statute was not raised and no question was raised except that we are proceeding under the statute. Senator Perkins says: "The statute provides that it may be one thing or another; removal from office, with perpetual disqualification from ever holding office again; removal from office, without any disqualifications." We have no such statute in this case. Neither have we anything unless we want to read into the Constitution that which I think is not there.

Now, Mr. President, my friend from DeWitt refers to the fact that there was a comma in the proceedings of the Constitutional Convention. Well, I am not going to contend with him on articles of grammar. He says that when the framers of the Constitution

wrote the minutes and said that the punishment in cases of impeachment shall extend only to removal from office they put a comma there and went on and said "disqualification from office." Well, I don't know. I asked my friend, the Senator from Fannin, who is a school teacher, what he thought of the effect of putting a comma in there—

Senator Gibson: I desire to say that I have not practised for a long while and am not an authority on that proposition.

Senator Lattimore: I can't say, but I listened with both ears to my friend from DeWitt to elucidate the value of a comma there, but he said there was a comma there and went on to other and bigger things. I just turned and opened my statute, which happened to be lying on my table. Of course, the printers in Texas and revisers of our statutes may not be as particular about their commas as they were in olden days, but I feel that when it says theft of property from fifty dollars down shall be punished by imprisonment in the county jail for not over two years, and so forth, then comma—comma, one right there, and then put to hard work on the county roads, and then there is a comma, Senator, and then there is an "and"—"by fine not exceeding five hundred dollars, or by such imprisonment without fine." Now, nobody knows better than my friend, the Senator from DeWitt, that the Court of Criminal Appeals in this case, in passing precisely on this case, says if you enter a judgment in which a man has been convicted of a misdemeanor, and you write in that judgment that he shall be punished by a fine only, and omit that part which comes after the comma, and after and including the word "and," that the judgment is absolutely void. How in the world a distinguished lawyer like my friend, the Senator from DeWitt, looking at the question as I am sure he does without any partisanship, without any heat, looking at it simply from the standpoint of the legal eminence to which his years of distinguished study of the law have brought him, can lead him to conclude he may stumble over a little comma, to stumble into the slough as he did—

Senator Bailey: Will the Senator yield?

Senator Lattimore: I gladly yield.

Senator Bailey: You are a good lawyer, and you will admit—you admitted it in the Committee on Civil Jurisprudence, if you didn't you ought to have—

Senator Lattimore: Possibly that last may be true.

Senator Bailey: An entirely different rule of construction prevails as to a penal statute. A penal statute must be strictly construed. The Constitution is liberally construed.

Senator Lattimore: I shall be glad for the Senator to remain on his feet and explain to his unfortunately obtuse friend from Tarrant, how are you going to explain "and" away? I would like for you to explain that.

Senator Bailey: He is falling into this error: He is trying to interpret the Constitution by the rules laid down for the construction of the penal statute. That won't work.

Senator Lattimore: Senator, have you ever found a construction of a penal statute or the Constitution or a civil statute where the Court says you can deliberately strike out "and" and put it in the fire or throw it away to get rid of it? I have never been able to find a decision so construing it, and when the framers of a statute or a constitutional provision state that these two things are connected by "and," I am—I started to say I am just fool enough to use that statute and connect them by "and." I don't believe we have any right to construe it out of the way. They said what? I will go back and I want my friend from Bexar to discuss it. I come back to this proposition put by Mr. Collamer in the Humphreys case. If the question be divisible—and my friend from Bexar wanted to make it divisible in the Committee Room, wanted to take a vote on the question of removal from office and a separate vote on the question of rendering him ineligible to office—if the question be divisible, if there being two sections of it, how in the world can you vote against the first one and in favor of the second? But my friend from DeWitt's reply to that would be probably as it was in the Committee Room, that you cannot vote to disqualify a man from office—you can't vote to disqualify a man from office without effectually disqualifying him from this time on. I don't know whether the Senator from Bexar took this position in the Committee Room or not, I will

not charge him up with this. I will lay that question at the feet of my distinguished friend from DeWitt.

Senator Bee: Will the Senator yield?

Senator Lattimore: Yes, I will, gladly, because he is coming after me.

Senator Bee: The Senator from Tarrant is well acquainted with the record of the Senator from Bexar on the question of consistency.

Senator Lattimore: Yes, sir; I am very well acquainted with it, but the position taken there may be taken here, that we may write into this judgment a limited disqualification—that we may say that this man is disqualified for three years, or, as in the Minnesota case, I believe that was the Minnesota case that was quoted with the approval of my friend from DeWitt this morning, that we might write into this judgment a disqualification for three years; and I reply here, as I replied there, that if the Senate of Texas has the power to put an outside limit of time up to which disqualification may run and beyond which it may not go, that it would be foolish and inconsistent, so I say to my friend from Bexar, if the same Senate may not fix the time when the disqualification may begin. I can not conceive, in my way of thinking, that we could recommend in the judgment that the disqualification should begin now and extend up to three years and cease without conceding to the same body that has got the power to write a judgment like that, the power to write into its judgment that the disqualification shall begin two years from now and run for three years. I don't see how any man can take a position opposite to that. How can any man say that we have got the right to write those things into the Constitution? No, gentlemen, without reflecting upon the ability or learning or patriotism or the honesty or integrity of any other man on this floor—and I concede all those virtues to every one of them—the Senator from Tarrant is constrained to take this Constitution, that to my mind is so simple that a fool need not err and the man who runs may read and understand and under the provisions of that plain Constitution enter the judgment in this case and then no mistake can be made. Surely when we get to fooling with precedents, surely when we get off into metaphysical discussions upon this interpretation and the other interpretation, surely we are liable to follow off after erroneous precedents.

I do not care, Mr. President, to discuss the question of policy. My friend from DeWitt says that as a matter of policy—now, I want to say to you gentlemen that whenever you get into the question of policy you get upon the dangerous ground that my friend, the Senator from El Paso, criticised the Senator from Jefferson for indulging in. But if I were to be influenced by the question of policy, I want to say to you gentlemen, taking the things that were in the morning press, taking the document that was presented in the committee room yesterday, if I were to be influenced by policy and the man should say, "I care not that the Senate has found under its solemn oath the truth of ten of these charges; I do not admit the truth of any of them; I care not that the Senate is prepared to enter its solemn judgment; it is my purpose to take the Senate's judgment before the people and attempt to have the people review the judgment of the Senate." If you are discussing questions of policy, I call attention to the utterances made upon the floor of this Senate by the Respondent in this case. Ah! my friend from DeWitt said this morning, if the Respondent had blown up this capitol, if the Respondent had blown up this sacred edifice out yonder upon the hill—God knows, as far as the Senator from Tarrant is concerned, I would rather he would blow up this capitol than to blow up the reputation and the honor and the boasted integrity of the men who inhabit this capitol; I would rather he would blow up that sacred edifice out yonder on that hill than to go from end to end of this State—ah! I say to my friend from DeWitt, the great playwriter said: "My good name is my most precious possession; the man who takes it from me takes that which does not enrich him, but makes me poor indeed." If you talk about policy, Senator, if you are going off from just what our duty is under the law and Constitution, if you are going to delve into matters of policy, I want to say to you that the policy you advocate would put that institution in the middle of politics, you know this,

from one end of the State to the other—

Senator Bailey: Will the Senator yield?

Senator Lattimore: Pardon me—because the Respondent announced on the floor of the Senate the other day in the remarkable speech he made in outlining a campaign, in which, if I understood his plain language, he affirmed his purpose to fight that institution and every dollar that is appropriated for it in the future and make war upon it and attempt to array the uneducated against the educated, array the country against the town, and the poor against the rich; and if you are going to go into questions of policy it seems to me that you will arrive at the conclusion where there is but one to be reached.

Senator Bailey: Will the Senator yield?

Senator Lattimore: I yield.

Senator Bailey: You said you would rather the Respondent would blow up the University than to blow up the reputations of Senators?

Senator Lattimore: No, I didn't say Senators. I said that edifice up there.

Senator Bailey: I thought you said the reputations of Senators.

Senator Lattimore: No, they haven't got any.

Senator Bailey: Is Senator from Tarrant afraid to trust the people of his own or any other district?

Senator Lattimore: The Senator from Tarrant is not afraid to trust the people anywhere or under any circumstances. The Senator from Tarrant might have a great deal of confidence in the people of a given community, but that would not justify the Senator from Tarrant in being willing to turn loose among the people of that community, when he had the power to prevent it, that which he believed would set the men and women of that community against each other and by the ears from every standpoint. I am not addressing myself, however, to this question of policy. I am just calling the attention of my friend from DeWitt to the danger of being permitted to be swayed by a question of policy in this case.

Now, Mr. President, and Gentlemen, I have discussed this question as fully as I feel inclined to. There are no precedents that are the least bit satisfactory to the Senator from Tarrant. We have our Constitution without a statute, and I believe purposely—I believe purposely. I believe, gentlemen, that there was a great object in that. All of these crimes and all of these misdemeanors that infest our State and disturb our people, they are made by violations of statutory laws, with punishments affixed, and I think it was the intention of the framers of the Constitution and I think that intention has been observed by the Legislature ever since to recognize that in the judgment of two-thirds of this body might safely be committed the question of removal and disqualification of the constitutional officers who may be impeached. I think they purposely omitted to put any limitations in the provision. And I go further than that and say if this Legislature or any other Legislature, in my judgment, were to attempt any limitations, those limitations would be unconstitutional. I think the power given to the Senate can be exercised. The power is given to the lower house to pass upon questions as to what shall constitute grounds of impeachment. We are then given the power to pass upon those same matters by way of demurrer. We are given power to decide without any limitation whatever upon whether those questions shall be sustained or not—not a single legislative restriction, not a single legislative hampering. We are put here with our responsibility to the people, with our responsibility to our consciences, with the Constitution before us. Answering this, I stop to say, Senator, we must follow this Constitution without any restrictions of any kind whatsoever. Those are my views, gentlemen.

I need not attempt to discuss what has been the holdings of the Courts as to the meaning of the word "only," there have been so many decisions on that question, every one of them alike, not a single dissent. They hold that the use of the word "only" is one of exclusion and inclusion. In other words, if I may use this illustration—and with this I am practically through: The creation of a court by statute or the creation of a court by constitutional provision,

whose jurisdiction under the verbiage of the statute or the verbiage of the Constitution shall extend only to a given class of cases, shall extend only to civil cases where the amount in controversy is more than five thousand or less than ten thousand dollars, why, neither my friend from Bexar nor my friend from DeWitt nor any other lawyer would contend for one single serious moment that that court had any power to go outside—why, would my friend from DeWitt or my friend from Bexar contend in the case of the creation of a court of that kind that that court might come on down and take jurisdiction of cases involving less than five thousand dollars? Why, the answer to that would be, even without hesitation, "certainly not—certainly not." There is an exclusive, there is a definitive, there is a boundary above and below, if you please. Suppose we were creating a criminal court; suppose we should put into our definition of the powers of the court that the jurisdiction of this Court shall extend only to felony cases. Why, my friend from Bexar would come along and undertake to prosecute a misdemeanor case and say that that is intended only as an outside limit, that that is intended as a further boundary, and because it says it shall extend only to felony cases it is intended to include everything this side of felony cases. Why, my friend from Bexar nor my friend from DeWitt nor any other lawyer would so far stultify himself by taking a position like that, because beginning now and running back in an unbroken line of decisions the courts of this country have said that the word "only" is one of exclusion and inclusion, and when you put into a law that the judisdiction of a court shall extend "only to" that you don't mean everything this side, for the reason I stated in the beginning, that there is nothing to decide what is this side save the individual judgment of the individual man. Those are my views, gentleman. If I could bring myself to believe anything else, if I could conscientiouly believe anything else, I should be glad to; but I am unable—I am absolutely unable to believe when the framers of the Constitution wrote into that Constitution that judgment for impeachment shall extend only to what? to removal from office and disqualification from office, that they intended to state the punishment for impeachment outside of and separate from anything that is greater or less than the judgment of the individual man and to make the punishment of impeachment following impeachment judgment after impeachment extend only to those two things and to nothing else.

Senator Bee: Mr. President, does the Senator from Dallas desire to be heard?

The Chair: The Senator from Dallas.

Senator McNealus: Mr. President and gentlemen. I have been punished enough already. I decline to be heard.

Senator Bee: Mr. President, I don't think the Senator from Dallas intended that unkindly to the Senators who have spoken. I have no desire to punish this Senate, certainly none to punish myself.

We stand at the brink of a decision of the first precedent in this State upon the question of impeachment. A Senator who held a view upon this question would be untrue to himself if he did not crave the indulgence of the Senate even though by so doing he inflicted punishment that he might present his views upon it. Mr. President, and gentlemen of the Senate, as I have stated upon another occasion, the supreme moment has come. The clock is about to strike the hour when the issue between the commonwealth of Texas and its Chief Executive is to reach its final judgment. The Senator from Bexar occupies a position different from the gentlemen who have spoken, at least some of them, in that in his judgment on this very solemn occasion, he has put aside tiés of political affiliation and a personal friendship, and has brought to the bar of judgment the Governor of this State, and by his vote has ordained and decreed that that Governor is unworthy of holding his office. For that judgment the Senator from Bexar and other Senators are responsible only to their consciences and to their constituents. I do not care, upon this occasion, to trespass upon the time of the Senate, by dwelling long upon the ques-

tion of consequences to the Respondent. I must confess my surprise at the speech made by my distinguished friend from Jefferson upon an occasion of this character. I shall not, as I said to him before, either complain or criticise, because he is within his prerogative as a Senator of Texas to debate this question however he sees fit. I shall not debate whether or not this question should be submitted to the people of this State. Individually I fear not and I care not the judgment of the people upon any vote that I may cast where I divest myself of my capacity as a legislator and clothe myself in the ermine of a judge. When I sit as a legislator I sit, as far as my conscience will permit me to do, to vote the will and the judgment of the people that send me here. But when I divest myself of that capacity and clothe myself in the robes of ermine of a judge, I render that judgment regardless of what the people who send me here think about that judgment and answerable only to conscience and to my God. When I stand upon the floor of this Senate at this late hour with the time limited to me and beg of this Senate, not because the Respondent wishes it, not because perchance if this Senate should adopt the minority report and refuse to disqualify him from public office he might array class against class and stir strife and turmoil among the people of this State by offering for an office, because this judgment ought to be written, Mr. President and gentlemen of the Senate, regardless of the political fortunes or misfortunes of any man and regardless of the personal fortunes or misfortunes of any man. The issue that is before the Senate now looms larger than James E. Ferguson; it looms larger than any man in this body or elsewhere. It is a question as to whether or not the Senate of Texas is to write into its solemn judgment, to be a precedent hereafter, to be turned to and the pages of this record scanned by those men who will fill our places in the years to come, whether it be fifty years or a hundred years or five hundred years, as long as this Republic lasts. That is the judgment we are writing today. Mr. President, the remedy of impeachment, I assert, with deference I dissent from the position taken by the Senator from Tarrant, is a judgment political in its character, it is a judgment based upon misconduct in public office; it is a judgment entrusted to Senators to divest a man of his official robes and say to the people of the commonwealth that he is no longer worthy to fill the office in which they placed him. The history of impeachment trials through all times show the extent of limitations upon the power of Senates in matters of impeachment. It is a matter of historical knowledge in the days in England, under the laws from which our laws have sprung. The power of impeachment was carried to the power to inflict death and many a corrupt judge, many a corrupt prelate in those days when church and State mingled together as one indivisible part of government, paid the forfeiture of their lives in the Tower of London in answer to the judgment of a Court of Impeachment. When our government was founded, based upon and following the laws of England upon nearly all questions in consonance and keeping with the spirit of liberty and freedom that actuated the Colonies to rebel against the Crown, they limited the power of impeachment and said a prohibition should surround it so that no body of Senators sitting as a judicial power should take away from a man either his life or his liberty, as the fathers of England had done for hundreds of years. They wrote into the Constitution, into the organic law, into the anchor-sheet of our liberties, a provision that when a Senate sat in judgment as a Court of Impeachment its punishment should extend no further than to removal from office and disqualification for holding office of honor, profit or trust. I do not do this in a spirit of levity. There is no man in this Senate possessing judicial and historical knowledge of our institutions and the ability to so faithfully portray it as the Senator from Tarrant, and let me say to him that the debates upon the adoption of the Constitution from which emerged the articles with reference to impeachment nowhere were touched by the brilliant mind or the brilliant pen of Thomas Jefferson, because Thomas Jefferson, our father, the founder of the liberty, of the party to which we belong, representing his government in France

at the time, that the Lees and the Wises of Virginia fought and strove to save the doctrine of Hamiltonian government from being engrafted upon the Constitution of this Union, so much so that a study of that debate and of its progress will show that they brought the torchlight of liberty so clearly before the men who had wrested these colonies from King George that Alexander Hamilton, who believed in a monarchial government, who wished Presidents for life, who wished to invest the President of the United States with the power of a monarch, left the Constitutional Convention in disgust, and New York, under his guidance, refused for a long time to participate in its deliberations. Therefore, this Constitution was erected by men who prized liberty and a republican form of government. They wrote in there that neither a man's life nor his liberty should pay the price of official misconduct, but that they would limit it to removal from office and to disqualification from ever holding office thereafter. It is not pertinent, nor would it be appropriate, to review the impeachment trials in the Senate of the United States, because in only three of them has there been a judgment of guilty returned. In the Archbold case, of very recent date, the judgment recited his removal from office and forfeiture of the right to hold office. In the Humphreys case, bred in the struggle and strife of the Civil War, in the trial of the Respondent, Humphreys, in his absence, because as a Federal Judge he had left the bench and joined the fortunes of the Confederacy they inflicted upon him the maximum punishment. But I want to call the attention of Senators here before we write history in this judgment, before we write precedents in this judgment—and I dissent from the doctrine of the Senator from Tarrant that precedents have committed more crimes against civil government than anything else, when I say to him that in the blood of precedents the rights of free men have been born, just as under technicalities the rights of free men have been born—that in that hour, when this man had abandoned his bench and became an advocate of the Confederacy, Senators of the United States, imbued and swayed and swept with the mighty passions of that hour, with the Constitution of the United States before them, construed it as susceptible of separation, and C. H. Browning, the law partner of Abraham Lincoln; Collamer of Vermont; Trumbull of Illinois; Foster of Connecticut, and the great Garret Davis of Kentucky, participated in that discussion, and it was the judgment of Browning of Illinois, Foster of Connecticut and it was the judgment of the great Garret Davis of Kentucky, that the constitutional provision was divisible and separable, and the President of the Senate so construed it, and he submitted to them the division of that question. If the founders of this Constitution, Mr. President, had contemplated and intended in language so plain, as the Senator from Tarrant says, that he who runs may read, then the law partner of Abraham Lincoln and the great lawyer Garrett Davis read the Constitution in vain, the President of the Senate who presided over that body read it in vain, because they separated the question and submitted it to the Senate as to whether he should be removed, and second, as to whether he should be disqualified. Upon what did they base it? The Senator from Tarrant says upon precedent. Yes, the precedent in the Pickering case, where a Federal judge in New Hampshire, brought to the bar of the Senate for misdemeanors and high crimes in his office, was unable to appear and answer to the judgment, insane, tottering at the brink of the grave, Senators of the United States fresh from the debates in the Constitutional Convention in which this article was put, voted only upon the one charge. Oh, the Senator from Tarrant says they did that because this man was insane, they did that because he was tottering at the brink of the grave. Let me ask the Senator from Tarrant, if that be true, why did the Senate of the United States deem it necessary to sit in judgment and remove an insane man? How could he proceed if he was tottering at the brink of the grave in such a way that his usefulness as a judge was at an end and groping in the darkness of mental oblivion, why did the Senate of the United States bring him to judgment? If this constitutional provision of the United States be not divisible, why did the Senators of the United States, fresh, as I say, from the debates in the Constitutional Convention, stultify their

caths and sacrifice the Constitution of this government upon the altar of sympathy and refuse to vote the plain mandates of the Constitution It was because, as said by Browning and Foster and Davis in 1862, under the Constitution of the United States, the punishment was divisible. Have we not the right, in the face of that precedent, to ask this Senate to divide this punishment? Talk about the California case—and counsel read with unction the provisions in that trial with reference to the statute. Let me call the attention of the Senator from Tarrant that that statute followed the Constitution of California. The argument was made by counsel for the Respondent on the floor of this Senate, and with great force to me, that we had not established a mode of procedure under the Constitution.

Senator Lattimore: Will the Senator yield?

The Chair: Does the Senator from Bexar yield to the Senator from Tarrant?

Senator Bee: I yield.

Senator Lattimore: You say that statute follows the Constitution of California?

Senator Bee: Yes, sir.

Senator Lattimore: I believe your position is that the Constitution of Texas does not authorize temporary suspension from office?

Senator Bee: I don't think it does.

Senator Lattimore: Isn't our Constitution like that?

Senator Bee: Yes.

Senator Lattimore: Doesn't their statute have in it temporary suspension?

Senator Bee: Yes.

Senator Lattimore: Then you don't think their statute follows the Constitution?

Senator Bee: I don't know. An attack might have been upon its constitutionality. But I say to the Senator from Tarrant, as a lawyer and a very limited judge of the Constitution, that in my judgment the Constitution of Texas limits the punishment only to removal from office and disqualification. I differ with my friend as to the construction. I believe, however, that if they had intended to make a perpetual disqualification for office and not a limitation as contended by the Senator from DeWitt, they would have put into the Constitution that removal from office shall only extend—that conviction shall extend to removal from office and forever disqualify him from holding office. But I see no occasion to indulge in a discussion of that kind. I stand on the proposition that this question is divisible. I say we have a right under the circumstances of the case to determine the character of punishment. Why do I say it, Mr. President? Because under the Constitution of the United States a man must be guilty of high crimes and misdemeanors, and under the Constitution of Texas—and I assert it here—a man may be impeached in public office by the House of Representatives and removed by the Senate for any offense which involves questions of good taste and public policy. I do not make this reference facetiously, but I say to you if it offends public taste, if it brings the State into disrepute, if his conduct makes impossible a proper respect for the man who occupies the office from the people that constitute the commonwealth, this Senate has the right under the Constitution of Texas, because it is not limited in its power, to remove an officer if he kisses his wife upon the public streets on Sunday.

Senator Bailey: Will the Senator yield?

Senator Bee: I yield.

Senator Bailey: Senator, doesn't it occur to you that the framers of our Constitution had in mind the very fact that the Senate of Texas ought to be allowed lattitude in assessing penalties, to be governed by the nature of the offense for the commission of which the Respondent has been convicted?

Senator Bee: I will say to the Senator that that is the reason they did not specify the offenses.

Senator Lattimore: Does the Senator from Bexar yield?

Senator Bee: Just a minute. Pardon me. That is the reason they did not undertake to define high crimes and misdemeanors, because — and then I will yield to the Senator from Tarrant—

Senator Gibson: Mr. President, the time is up.

Senator Bee: Pardon me. Because the makers of the Constitution looked into the future and said, "We

will leave to the Senate and House of Representatives the power of removing an officer for whatever cause or offense, whether it involves moral turpitude or not." I yield to the Senator from Tarrant.

Senator Lattimore: It is rather aside from the discussion right now, but in line with the discussion of the Senator from DeWitt. Do you think under our Constitution that we might fine and imprison him, or fine or imprison him?

Senator Bee: I say we cannot.

Senator Gibson: Mr. President?

The Chair: The Senator from Fannin.

Senator Gibson: We have either got to move the clock back or move the Senators up. I move that we set the time back. How much more time do you want?

Senator Bee: Mr. President, I can conclude easily by four thirty.

Senator Lattimore: Then, Mr. President, I ask unanimous consent that the time of the Senator from Bexar be extended until four thirty and the vote be taken at four forty.

The Chair: The Senator from Tarrant moves that the time of the Senator from Bexar be extended to four forty p. m. Is there objection? The Chair hears none.

Senator Bailey: Will the Senator yield?

Senator Bee: Yes, sir.

Senator Bailey: Doesn't it occur to you that it was the intention of the framers of the Constitution in framing this section of the Constitution to allow the Senate latitude in assessing the penalty; to assess a heavier penalty for the crime of blowing up the Capitol than for kissing a man's wife on Sunday, as the Senator from Bexar alluded to?

Senator Bee: That is exactly what I was seeking to convey, that the framers of the Constitution—and let me say, in that connection, that is a very interesting thought—that in the Constitution of Texas, written by college graduates and distinguished men far removed from civilization's haunts, they wrote a comma after "office." The Constitution of 1845, composed of equally distinguished men, they wrote a comma after "office." In the Constitution of 1866, the result of which was to place that great Democrat, James W. Throckmorton, in the Governor's office, soon to be removed by Federal power, they wrote a comma after "office," and when we emerged from the dark days of reconstruction and the carpetbagger was driven from power, the founders of our government took into their own and the people's hands again the reins of office, and in the Constitution of 1876 they wrote a comma after "office" and they said then that removal shall extend—conviction shall extend only to removal form office, comma, and disqualification. There must be some purpose for a comma.

Senator Hudspeth: Will the Senator yield?

Senator Bee: Yes, sir.

Senator Hudspeth: The Senator from Tarrant asked you this question, or propounded this interrogatory: That if the Constitution provided that district courts should only have jurisdiction in felony cases, could you try any other case? You said no. Now, I want to ask you this question: Would it be contended by any lawyer that if the Constitution of this State provided that the jurisdiction of the district court should extend only to felony cases and removal from office, or disqualification from holding office, would any lawyer contend, in your judgment, that you could not try a man on either charge?

Senator Bee: There is no question about that. The Senator from El Paso is absolutely correct on it.

Senator Hudspeth: I think that answers the question.

Senator Bee: Absolutely.

Senator Henderson: Mr. President.

The Chair: Does the Senator from Bexar yield?

Senator Bee: I yield to the Senator from Morris.

Senator Henderson: Suppose there was a comma following the word "office." I have heard a good deal of discussion of that, but have never been able to understand what effect that gives to the lahguage, and would like for the Senator from Bexar to explain what effect the comma has after the word "office."

Senator Bee: I can only say this: The Senator from Bexar makes no claim to being a grammarian or having knowledge of the finer uses of punctuation, but it occurs to the average man that when you write an indivisible sentence you render it indivisible without putting any divis-

ible points in it; that if the founders of the Constitution had intended there should be a removal and a disqualification, an indivisible subject, they would not by a comma have divided it. I do not know of any use of a comma except separation; it separates a sentence, and if that is the use and purpose of it it probably is in order to separate the way in which you use your voice in reading; you read to a certain point and get to a comma and you drop your voice. But, whatever it is, it contemplates a division—a division of what? A division of the question. What question? A division of the question as to the maximum of punishment for impeachment. Let me illustrate it, Mr. President, if I may. Why so seriously contend upon this occasion? I contend for history's sake—contend for a future that is bound to come when this case will be the great precedent of impeachments, long after the men who constitute this body have passed from this earth into oblivion. Tell me that under the Constitution of our State the founders contemplated that a man elected Governor of this State who should come into this capitol drunk and discharge his pistol in the corridors of the capitol and endanger the lives and limbs of the people who inhabit it and bring disgrace and scandal upon the commonwealth, that it intended to put upon him a judgment of removal and say to him: "As long as you live, no longer again shall you practice your chosen profession at the bar of this State as a lawyer; no longer again can you serve in a fiduciary capacity; that when you go back to your home among the people among whom you have been raised, chastened and reformed by the lessons we have brought to bear upon you for your official misconduct, you shall not, no matter how eminent you may become in civic virtue, no matter how useful you may be in public service, no matter how true might come reformation to you that makes you a high-minded and worthy citizen of the commonwealth, that the people of the community among whom you live shall not have the right to say to you that you shall serve upon the school board of the little community and lend your voice and influence to the upbuilding of the educational interests of your little settlement."

Senator Lattimore: Will the Senator yield?

Senator Bee: Yes, sir.

Senator Lattimore: Do you think a lawyer representing a defendant on trial for forgery or one of the offenses that the Constitution says if he is convicted of shall bar him from holding office in this State, do you think that the lawyer would have the right or it would be his duty or privilege to go before the jury and say: "Notwithstanding the law and the evidence, you ought not to convict this man, because if you do, under the Constitution and laws of this State, the consequence is that he cannot hold office in this State?"

Senator Bee: Why, Mr. President, the Senator from Tarrant has time without number, since the memory of man runneth not to the contrary, pleaded before the juries of Tarrant County not to take the miserable defendant who sat under his protecting wing and send him to the penitentiary and make a convict of him and say to him and his children, "You can no longer go into God's daylight as a free, untrammeled and enfranchised citizen."

Senator Lattimore: Now, I am sure you do not mean to evade it.

Senator Bee: No, I didn't. If I did, I didn't understand it.

Senator Lattimore: The Constitution says a man shall not hold office if he is convicted of certain crimes. Do you think it is a proper argument before a jury to say, "You ought not to administer the penalty in this case, because if you do the constitutional consequence will be that this man cannot hold office"?

Senator Bee: I will answer that by saying it is done time without number. It has been upheld by the courts of this State as a legal argument in behalf of a defendant. Where a man is tried for forgery counsel have a right to appeal to the jury not to put a judgment of conviction on him because to do so would make him no longer a citizen and voter, because it would take him away from his family and put upon them the shame and disgrace that their father walked in the community, no longer able to go to the ballot box with his fellow citizens and cast his vote. But let me say to the Senator from Tarrant that the meanest murderer that walks the street with stealthy tread

to take human life in the darkness of the hour, may come from the penitentiary walls with a proclamation of pardon in his hand and can aspire to the highest or lowest office in this land; and yet tell me by the solemn judgment of this Senate that it is to be ordained that from this time on an officer of the government, whatever he may be guilty of—official misconduct not involving moral turpitude, perchance—can never again hold his head up in the face of his fellowmen and say to them "I submit my case to your judgment for constable of the precinct" when a nigger can beat him if they've got enough of them, and he can hold it—when the murderer can come back and he can hold it—when the burglar who goes into your house in the dark hours of the night, can come from the prison walls with a proclamation of pardon and he can hold it—when the rapist can come—woman's virtue destroyed—and he can hold it; and yet we are called for a construction of this Constitution more strict than the laws of the Medes and Persians. This Senate is not allowed any elasticity. We are told that "Vengeance is mine, saith the Lord," and yet we are told that the founders of the Constitution, the brave men who carved this commonwealth from the wilderness, the brave men who had made this commonwealth to blossom like a rose, solemnly and deliberately intended to enter their judgment that a man who got drunk and misconducted himself in office should not have that which is given to the commonest thief in our land.

Senator Collins: Mr. President, does the Senator yield?

Senator Bee: Ah! I am glad the Senator from Jefferson arose. I was thinking of him, the gentleman who proclaimed upon the floor of this Senate that he was a Christian. He forgets the little rhyme, the little hymn that says, "While the lamp holds out to burn the vilest sinner may return."

Senator Collins: Will the Senator yield?

Senator Bee: Just a minute. Then he forgets Jesus Christ, who brought redemption to this world and set aside the laws of the Medes and Persians and said to the woman taken in adultery when the crowd undertook to stone her: "I forgive you. Go and sin no more." Where is your doctrine of Christianity that brings into the Senate of this State and substitutes the doctrine of Christian love and charity—substitutes the doctrine of that mercy which is not strained, the quality of which is not strained, and falleth like the dews of heaven upon the just and the unjust? I yield to the Senator from Jefferson.

Senator Collins: Thank you. Does the Senator believe that a man armed with the great constitutional power that the Governor has to restore the citizenship of the rapist and murderer and thief and restore their right to vote and so forth, does he believe that when he flagrantly violates the Constitution and law that he ought to have the same rights as the others?

Senator Bee: Ah! the Senator avoids the question. I am not discussing this case in the light of James E. Ferguson. I care nothing in this discussion, as I said in the beginning, for the personal fortunes or misfortunes of any man. I am seeking in my feeble way to lay before the Senate the fact that in the years to come, when the archives of this Capitol are ransacked for precedent, the doctrine is going to be contended for by Senators on this floor, that the distinguished Senator from Jefferson contended that mercy had no place in government—that the distinguished Senator from Tarrant contended that the law fixed by the Constitution of this State was as inflexible, as I said a minute ago, as the laws of the Medes and Persians, and no man had a right to modify and mitigate it.

Senator Collins: Will you yield?

Senator Bee: I yield.

Senator Collins: Will you not give me a definite answer to my question? When a man is armed with the constitutional power that the Governor has to relieve the evils of other men, when he violates the law and Constitution, ought he to be treated with the same consideration?

Senator Bee: Certainly not. But let me say to the Senator from Jefferson again—and I seem not to have made myself plain—that I care not for the personal fortunes or misfortunes of any man who, as he said, has flagrantly violated the laws of this land. But I am pleading with this Senate for a precedent for those who come hereafter to follow—

Senator Collins: So am I.

Senator Bee: When the Senate of Texas sits in solemn judgment upon the case of some citizen of the district of the Senator from Jefferson or of the Senator from Tarrant who has yielded to an evil impulse for a moment in the administration of public office, that the Senate of Texas shall not say to him that "The power of reformation is taken away from you; you are branded through all time, no matted how with charity, no matter how with philanthropy, no matter with what right living you may atone for the ills done in the flesh, no matter how with Christian charity you may come and lay yourself at the altar of your people and say to them, 'I erred against you; I treated the Constitution of my country unfairly; but twenty years have passed to soften, and old age has come to me, my hair is growing white, and the pathway grows shorter and shorter, which takes me into yonder grave. I say to you I am no longer the man that I was; no longer will I deal in that character and conduct that makes me unworthy to be an officer in your State. I come to you and say in my declining years, give me the chance to serve upon your school board; let me in humility and humbleness be the justice of the peace in the little country precinct in which I live; that I might with official sanction render judgment between my neighbors. My probity of conduct, my right ideals of living, my right course of man's duty to his fellow man, has made me the personal arbiter between my neighbors. Let me come and sit in judgment under the law of my State,'" there he will be confronted by the fact that the Senators of Texas have said that in every other avenue of life, it matters not where, under the teachings of the Savior of mankind, under the munificent blessings of Almighty God every man has a chance to come back into the paths of rectitude and serve his country—the rapist, the burglar, the murderer, the thief—all except a convicted Governor of Texas, a convicted Lieutenant Governor of Texas, a convicted Comptroller, or a convicted Attorney General under a Constitution that gives the Senate power to place that judgment upon his head for offenses that in no way constitute moral turpitude, that in no way touch the integrity of the soul and the personal honor of the man. I plead with this Senate, plead with them for a righteous judgment. I voted to remove this Governor. God give me life to stand when that roll is called, I shall vote to put into solemn judgment that removal. But I say that under the organic law under the precedents, under the theory, under the beliefs of the men that rendered this anchor-sheet of our institutions we have got a right to say that this punishment shall go no further, that if this Senate subscribes to the doctrine so ably advocated by the Senator from Tarrant and by the Senator from Jefferson and so ably contended for by other Senators, I say to you that you have written across the history of this State in letters so large a judgment which shuts the door of hope in the face of men, that says to the man that erred in public office, "You shall never again have the quickening touch of God's reforming powers to bring you back into the broad avenue of life. We will make you an outcast in this world. We will drive you with scorpion whips all over this State. The finger of scorn shall be pointed at you, and it will be said of you what is not said of the rapist and the murderer and the burgler, 'because you got drunk in public office, because you acted unbecoming the high dignity of that position,' it is said of you as you go through the streets, the humblest nigger in this land has rights to hold an office denied to you."

Senator Lattimore: Mr. President.

Senator Bee: Just a moment—just a moment. "Even a Chinaman born in this country has rights ahead of you, and you stand solitary and alone, a marked man because of official misconduct." Let me ask the Senate—and then I will yield to you, Senator.

Senator Lattimore: Certainly.

Senator Bee: Let me ask the Senate to sweep away the passions of the hour; forget questions of policy; I care not for them. Sweep away the engendered emotions that come in great political controversies. Stop, pause and consider long before you write into what will be for all years to come the organic

law of this State, because this Senate's solemn, judgment will be so construed, a punishment excessive and cruel, beyond the Bill of Rights which says you shall outlaw no man. I beg that of this Senate before they do this. I yield to the Senator from Tarrant.

Senator Lattimore: I just want to ask you this, Senator,—your beautiful, eloquent expressions, are you not discussing the legal consequences of a judgment of guilty? Will any man in this State have any right, when he has been adjudged to be guilty, to drop a part of the punishment imposed upon him, that which would follow the result of a conviction of guilty?

Senator Bee: Why, certainly. Let me say to the Senator from Tarrant, last May I stood in the Federal Court of my city, under judgment of guilty rendered by a jury of the countrymen of a young soldier who stood to receive his judgment, and I heard the lawyer that represented the Government appeal that he might be taken from the court room and hanged by the neck until he was dead. Counsel that represented him pleaded for the exercise of mercy that was not strained; plead for the erring feet which perchance strayed,—nobody knows what may have caused them so to stray—plead to the equity of the Chancellor, plead to the mercy of the Chancellor, plead to his humanity, to his kindness as a man, and he rendered a judgment of two years in the penitentiary under that plea. Tell me when a constitutional provision is separable and divisible, and to contend that it is otherwise, is to attribute to the founders of this government attributes of the lack of Christian charity, to attribute to the man that wrote the Constitution an ignorance of the teachings of Jesus Christ He saw back to the old ages when it was an eye for an eye, and a tooth for a tooth, when no government existed or organization of men, and though berated man fleeing from his enemy's grasp found refuge in one of the seven cities of refuge where he was then safe from the ravenous crowd which pursued him, that when this doctrine has been banished from this earth and men have been taught to look with charity and forbearance, nor for this man, I plead not for him, I plead for the established law of my commonwealth, I plead for the humanity of the men who founded it, I plead for those who will come hereafter that they may not, as we did, search and ransack the archives in vain, but that they do as the Senator from Jefferson, the Senator from Morris, the Senator from Walker, the Senator from Tarrant did, and find that the Senate of the United States had construed the Constitution with charity, found that the Senate of California had construed the Constitution with charity. Yet a man is told by the distinguished Senator from Jefferson that he is showing the white feather—showing the white feather because perchance he votes solemn judgment of guilt upon the man deserving it and still wants not the maximum punishment inflicted upon him. Let me say to the Senator from Jefferson, if that is his doctrine he ought not to take the defense of any man in the courts of his country. When a man commits murder, which is defined as a captal offense, the Senator from Jefferson is unfaithful to his oath as a lawyer under his construction if he goes into court and pleads with a jury of his countrymen to mitigate the punishment and not to affix the maximum.

All I say, gentlemen, and I am done—I have not gone over these matters as I wish. All, I repeat again, is that in this solemn moment. however little we consider it, however, little attention we pay to what we are doing, we are writing the most momentous judgment that has ever been written in the history of this commonwealth since Sam Houston at the point of the sword wrested Texas liberty on the plains of San Jacinto. We are writing history here. The little men that run hither and yon and make part of that history are of no consequence to the great, large, looming consequences of their action. It matters not what we do as individuals. We hold very little longer, perhaps, as individuals, but the Senate of Texas is sitting here now—I repeat it again—to render its solemn judgment, that which will come as sure as God reigns to plague the history of this State, to put the brand of disgrace, perpetual and everlasting, upon official misconduct,

that might reform. You can do it, of course. I realize how hopeless it is. But, answerable to my God and my conscience, clothed with a solemn protest against the exercise of arbitrary and autocratic power, against the stifling of conscience, against the setting aside on the pages of history which have been brought down to us without change since the new dispensation came to bless the men and women of this earth against the doctrine of the laws of the Medes and Persians, against the doctrine, "an eye for an eye and a tooth for a tooth," for a humane exercise of law, for a humane exercise of power, for the charity which all men have, and all men. whether it be in the hour of passion or prejudice, ought to rise above, like sun-crowned men above the clouds that lower above their heads, saying that the judgment that we write not for today, it matters not for today, we write for the hereafter, that the children of Texas may know we have construed our organic law, the sheath of our liberty, in charity and in love and not without mercy. I could say no more; I could say no less. I leave the matter with the Senate of Texas.

The Chair: The question is—

Senator Lattimore: Mr. President.

The Chair: The Senator from Tarrant.

Senator Lattimore: What were you going to state?

The Chair: The Chair was going to state that the question was upon the motion of the Senator from Bexar, that the minority report be substituted for the majority report.

Senator Henderson: Mr. President, has the majority report ever been offered?

The Chair: Yes, sir, it has been offered, and the minority report has been offered as a substitute.

Senator Henderson: That has already been done?

The Chair: Yes, sir.

Senator Gibson: Mr. President.

The Chair: The Senator from Fannin.

Senator Gibson: I desire to make a few remarks now—either now or when I go to vote, it doesn't make any difference, but I want two or three minutes.

The Chair: Is there any objection to the request of the Senator from Fannin? The Senator from Bexar had the right to close on his minority report.

Senator Bee: Mr. President, does the Senator from Fannin yield?

Senator Gibson: Yes, sir, I yield.

Senator Bee: I suggest that the time has not yet expired, and I move that the time for the argument be extended fifteen minutes.

The Chair: The Senator from Bexar moves that the time for the argument be extended for fifteen minutes. Is there any objection? The Chair hears none, and the time will be so extended. The Senator from Fannin

Senator Gibson: Mr. President, I will state that it is not my purpose to undertake to make an argument in regard to the constitutionality of this question, it has already been argued. I will state that this is a very solemn moment to me, I wish the Constitution could be construed differently from the construction that I am forced to put upon it. I went to two or three distinguished lawyers, friends of mine, when this question was first raised, and I confess to you, Mr. President, that I never had thought for a minute that there was any question about the character of punishment that should be administered or the character of judgment to be passed by this Senate until the question was raised. I went to some distinguished lawyers, friends of mine, and I asked them their opinion about this question, and one told me one thing and another another, and I decided that the only thing left for me to do was to settle this question for myself; and I got my dictionary, my rhetoric and my common school civil government and went to work. and I settled it to my own satisfaction, and to my mind, there is only one construction to be put on the Constitution. If I simply say to my little boy, whom I expect to obey me and whose disobedience would hurt me and make me feel that he was recreant to his duty and did not have the love for his father that he ought to have,—if I said to that little boy that, "Your duties this day shall extend to going to school only, to going to school and studying only your lessons this day," and he didn't do that thing; and he went away and played "hookey" or did something else, I would feel very much aggrieved at night when the little fellow came in and reported that he had not done

what I had evidently instructed him to do by the language that I had used. Mr. President, that is the only sense that I have as to—in the construction of the English language, is simply to take it for what it says, and that is all I know. I am sorry that this clause in the Constitution does not permit of any other construction. Some good friends of mine said to me when this question was raised—really asked me what I thought about it, and to lend my support to lessening this judgment, if possible; I told them that it looked very reasonable to me, that if it could be done, it ought to be done, and it pains me beyond expression this evening to find myself in the position that I cannot—that I cannot lend that leniency in this matter that has been pleaded for by the Senator from Bexar in his earnest and eloquent way, and by others here on this floor this evening. It is impossible for me to do, with the language of this Constitution before me; I wish it were otherwise. This is a time when I feel that the Respondent in this case has come to us as a suppliant at our feet, and is really deserving and ought to have, if possible, all the mercy that can be extended him by this body, and I believe that I speak the sentiments of every Senator who will vote as I do this afternoon, if it were within my power to put under my feet what I honestly and conscientiously conceive to be the language and meaning of the Constitution, I would do it, I would, sir. I would say to the Senator from Jefferson, that if it be called showing the white feather, if it were possible under my oath this afternoon, I would show that white feather in this particular; but I do not think it is possible.

Now, Mr. President, that is all that I desire to say, I just want to say this in a personal way, not that I want to offer any argument, but I feel that I ought to represent at least the laymen here this afternoon in our views upon this matter.

The Chair: The question is upon the motion of the Senator from Bexar that the minority report be substituted for the majority report.

Senator Lattimore: Ayes and noes.

Senator Henderson: Mr. President.

The Chair: The Senator from Morris.

Senator Henderson: I make the point of order that it is not necessary to adopt these reports, that the proper proceeding is that a motion be made that the majority report be entered as the judgment of the Court, and that the minority move to strike out that portion of the majority report which they object to. I do not think that the adoption of the majority or the minority report would make it the judgment of this Court. I think the proper mode is that a motion be made that—

Senator Bailey: Mr. President, does the Senator yield?

Senator Henderson: Yes, sir, I yield.

Senator Bailey: Senator, have you read the minority report carefully?

Senator Henderson: No, sir, I have not read the minority report; that is—

Senator Bailey: Well, the minority report moves that all of the majority report be adopted except these words, "and disqualification."

Senator Henderson: I will state to the Senator that the point is this, that the mere adoption of these reports, would that make it the judgment of this Court without a motion to that effect that it be entered as the judgment?

Senator Bailey: Will the Senator yield?

Senator Henderson: Yes, sir.

Senator Bailey: Wouldn't that come afterwards, after the minority report was voted down or adopted, or the majority report was adopted,—would not the question then be, shall the Senate adopt the judgment offered by the majority report?

Senator Henderson: I think otherwise, Senator, I may be wrong. My idea is that the proper motion would be that the report as sent up by majority be made the judgment of the Court—be considered as the judgment of the Court.

The Chair: If the Senator from Morris will yield to the Chair, the Chair will read the majority report and let us see how the Senator from Morris feels about the minority report.

Senator Henderson: Yes, sir, I know how it reads.

The Chair: You did not read the report, the majority report?

Senator Henderson: Yes, sir, I wrote the majority report, and the judgment also.

The Chair: Well, the Chair calls the attention of the Senator from Morris to the majority report again (reading same). Now, the motion made by the Senator was, that the majority report be adopted. The Senator from Bexar moved the substitution of the minority report.

Senator Henderson: Yes, sir, I understand the language of it; but would the adoption of the majority report make it the judgment of the Court?

The Chair: The opinion of the Chair is it would.

Senator Page: Mr. President.

The Chair: The Senator from Bastrop.

Senator Page: It seems to me that it might be well for some Senator who opposes the substitute to make a motion here to table the substitute, that the matter might be tried out on that issue. There are those of us here who wish to vote on the substitute, but in order for the impeachment to come about, we must vote for the majority report. Therefore, I suggest that the motion be made to table the motion of the Senator from Bexar

Senator Lattimore: Just simply to meet the desires of the gentleman, I move to table the substitute.

The Chair: The Senator from Tarrant moves to table the substitute. The question is on the motion of the Senator from Tarrant to table the substitute. Those favoring the motion will let it be known by answering "aye" as their names are called; those opposed by answering "no." The Secretary will call the roll.

(Thereupon, the Secretary called the roll as follows, to wit:)

The Secretary: Alderdice.
Senator Alderdice: "Aye."
The Secretary: Bailey.
Senator Bailey: "No."
The Secretary: Bee.
Senator Bee: "No."
The Secretary: Buchanan of Bell.
Senator Buchanan: "Aye."
The Secretary: Buchanan of Scurry.
Senator Buchanan: "Aye."
The Secretary: Caldwell.
Senator Caldwell: "Aye."
The Secretary: Clark.
Senator Clark: "No."
The Secretary: Collins.
Senator Collins: "Aye."
The Secretary: Dayton.

Senator Dayton: Mr. President, inasmuch as I expect to offer an amendment to the majority report, I desire to be marked present and not voting on that motion.

The Secretary: Dean.
Senator Dean: "Aye."
The Secretary: Decherd.

Senator Decherd: Mr. President, on this issue the Governor has my deepest sympathy, and I would that I could show mercy; but mercy must be seasoned with justice. My reading of the Constitution upon which I must base my vote, is that the judgment would extend only to removal from office and disqualification; that the word "and" is a copulative conjunction, and that the two phrases are one and inseparable. For that reason, yielding to the duty which is the highest guide back of me, I vote "aye." Would that I could vote otherwise.

The Secretary: Floyd.
Senator Floyd: "Aye."
The Secretary: Gibson.
Senator Gibson: "Aye."
The Secretary: Hall. (Absent.)
The Secretary: Harley.
Senator Harley: "No."
The Secretary: Henderson.
Senator Henderson: "Aye."
The Secretary: Hopkins.
Senator Hopkins: "No."
The Secretary: Hudspeth.
Senator Hudspeth: "No."
The Secretary: Johnson of Hall.

Senator Johnson: Mr. President, I am paired with the Senator from Wharton. I vote "aye." If he were present he would vote "no."

Senator McNealus: Mr. President, a question of judicial information. Can any members of the Court pair? This is not a legislative matter.

The Chair: It is a very serious question, the Chair will state.

Senator McNealus: This is no legislative matter, this is a judicial matter, I do not believe that anybody can pair.

Senator Hudspeth: Mr. President.

The Chair: The Senator from El Paso.

Senator Hudspeth: I think the question of whether you can pair or not upon this question would be one for instruction from the Chair, or ruling from the Chair, what vote it takes to adopt the majority report. If it takes a majority vote, you can certainly pair. If it takes a two-thirds vote, you cannot.

Senator Johnston: Can you pair in a vote in a Court, or a jury?

The Chair: The Chair is not prepared right now to answer the question propounded by the Senator from Dallas. The Secretary will proceed with the calling of the roll.

The Secretary: Johnston of Harris.

Senator Johnston: "Aye."

The Secretary: Lattimore.

Senator Lattimore: "Aye."

The Secretary: McCollum. (Absent.)

The Secretary: McNealus.

Senator McNealus: "No."

The Secretary: Page.

Senator Page: "No."

The Secretary: Parr.

Senator Parr: "No."

The Secretary: Robbins.

Senator Robbins: Mr. President, if possible, I am paired with the Senator from McLennan. He votes "no," and I vote "aye."

The Secretary: Smith.

Senator Smith: "Aye."

The Secretary: Strickland.

Senator Strickland: "Aye."

The Secretary: Suiter.

Senator Suiter: "Aye."

The Secretary: Westbrook.

Senator Westbrook: "Aye."

The Secretary: Woodward.

Senator Woodward: Mr. President, I am not a great constitutional lawyer, I have never claimed to be; neither am I a very great grammarian, I have never made any claims for that. I feel controlled this evening by what I consider a higher law than any man ever wrote, even those who wrote the Constitution of Texas, and I am glad to vote "no."

Senator McNealus: Mr. President, I desire to change my vote from "no" to "aye."

The Chair: The Senator from Dallas votes "aye."

The Secretary: Seventeen "ayes," nine "noes," one present but not voting, two paired.

The Chair: There being seventeen "ayes," nine "noes," one present not voting, and two pairs, the motion to table prevails. The question now is on the adoption of the committee report.

Senator Dayton: Mr. President.

The Chair: The Senator from Cooke.

Senator Dayton: I desire to send up the following amendment to the committee report.

The Chair: The Senator from Cooke sends up the following amendment. The Secretary will read the amendment.

(The Secretary thereupon read the amendment, as follows, to wit):

"Amend the majority report by adding thereto the following: Provided, that some future Legislature may restore to James E. Ferguson full rights of citizenship." (By Dayton.)

The Chair: The question is on the adoption of the amendment. Those in favor of the adoption—

Senator McNealus: Mr. President, a point of order.

The Chair: The Senator from Dallas.

Senator McNealus: This is the point of order: No Legislature has a right or authority to instruct any other Legislature of the future or in the past, or any other time. I raise the point of order that it is not germane and not entertainable, for the simple reason that this Legislature cannot instruct any Legislature of the future what course they shall take.

The Chair: The Chair would prefer that the Senate indicate its views on the question—that the Senators indicate their views by votes on the point of order.

Senator Dayton: Mr. President.

The Chair: The Senator from Cooke.

Senator Dayton: I desire to call to the attention of the Senator from Dallas that it does not say they "shall" do so, but that they "may."

Senator McNealus: Well, I object to that part of it, and raise the point of order made before.

Senator Collins: Mr. President, I raise the further point of order that this is a judgment of court, and at the close of any session of court its judgment becomes final and may not be corrected by any other court, and never can be opened by any other court.

Senator Lattimore: Mr. President, I desire to make this point of order, to keep this judgment from being a final judgment to write into it—if it were an ordinary court, passing upon the issues, to write into that judgment of an ordinary court that this Court, at its next term, may set aside its judgment, or that this Court may six months hence set aside its judgment and claim that to be the final judgment.

The Chair: Does the Senator from Cooke desire to be heard on the three points of order? The Chair will not for the present overrule the point made by the Senator from Dallas.

Senator Dayton: Mr. President, I have this to say in this connection, on the point of order: I do not think the points of order are well taken, for this reason, Mr. President: it his been during this trial my plan and my rule to remain rather quiet; I have been depressed, Mr. President, over this situation, until I did not feel like consuming any other time of this Senate by talking a great deal. I feel the responsibility —I have felt for Texas, and I have felt it for my friends who are involved, and I have felt it my duty as a Senator here, and, Mr. President, I remember the lines of Goldsmith when he wrote this:

"As a hare, whom hounds and horns pursue,
Pants to the place from whence at first he flew,
I once had hopes—my vexations past—
Here to return and die in peace at last."

I want to tell you, Mr. President, and members of this Senate, that that reaches the exact conclusion that I reached all the time about this constitutional construction, and that is this: that we are the supreme power, with nobody to review or undo us. We can write a judgment here that follows the construction of the Constitution. But I am bound to confess that I agree with the majority in it, and that both of those two go together, and the cumulative conjunction is the word "and," but while we do that, yet we owe a higher duty to go further and temper justice with mercy. Gentlemen, has it come to the point in Texas that it is Shylock and his pound of flesh? Is the Senate so little that it will not extend to this man, irrespective of the person, whoever it may be, a little bit of mercy? I want to tell you that I would rather resign my seat and go to my humble occupation as a farmer than to come here and do violence to the spirit of the Constitution. When we write into it that it means the supreme penalty without any mercy, in my humble judgment you are writing into it what the fathers never intended. What was the predicate, the cause of this?

The Chair: The Chair would like for the Senator from Cooke to discuss the points of order.

Senator Dayton: I am discussing them, or trying to, Mr. President. They made the point of order that it is out of order because we can't do it. I say we can. They say we can't because it won't be a final judgment. I say to you that any judgment this Senate enters in this case is final, and no power on earth can undo it, and I dare any man to gainsay it.

Senator McNealus: Mr. President, will the Senator from Cooke yield?

The Chair: Does the Senator from Cooke yield to the Senator from Dallas?

Senator Dayton: I am not through.

Senator McNealus: I thought you had yielded the floor. Pardon me; I saw you turn and I thought you had yielded the floor.

Senator Dayton: Mr. President, I want to do what is right, I want to do what is right to the State of Texas, and I want to do what is right in the setting of a precedent. It, therefore, becomes our duty to look somewhat to see what brought about these articles of impeachment and our Constitution, and the nature of the times and circumstances which gave birth to that provision of the Constitution. Gentlemen of this Senate, it was near the close of the Civil War when the carpet-baggers were down here and our fathers wanted an elastic proposition that they might get rid of objectionable characters with but very little grounds to get rid of them on, that is the reason. The same provision is not exactly in the original Constitution, because, as some of my distinguished grammarian friends have stated here, because there is a comma there, but now the comma is gone and for that reason, I think, Mr. President, as I said in the beginning, that the majority construction of that Constitution is true, and, gentlemen, when you visit one punishment you have to visit the other; but that does not preclude this Senate from adding that provision here that this judgment may be that this man may be restored to his rights as a citizen by some future Legislature. Gentlemen, after the storms of passion have swept by and the smoke of battle has cleared, you

may change your views on this matter somewhat, after the heat of the excitement and the strenuous stress of a trial lasting here sixty days shall have been written in history, it may be that you shall wish then that you had shown mercy. I want to tell you that I never thought it was wise to go to these extremes, for the reason that you and I never know, my good Senators, when it may be that we or our friends are on their knees before this or some other tribunal, asking for justice, for mercy. God knows that I want to try to practice that Christian virtue, "Do unto others as you would be done by," and not "Do others for fear they will do you," but "Do unto others as you would be done by." That is what I want to practice. Mr. President, I think that my amendment is in order, I think that there is no power on earth to undo what we do, and, believing that, I am going to tender it to the wisdom of this Senate. If you accept it, all right; if you don't, I shall vote for the majority report.

Senator Clark: Mr. President, does the Senator yield

Senator Dayton: I yield.

Senator Clark: Senator, then you believe in doing unto others as they do, but do it first, that is your doctrine?

Senator Dayton: No, I don't believe in that doctrine, Senator.

Senator McNealus: Mr. President.

The Chair: The Senator from Dallas.

Senator McNealus: I raise the point of order that all these proceedings are irregular, for the reason that this Senate can not provide a judgment in this case; the Constitution of Texas has done that. I have never seen a football kicked around in my lifetime so much as I have seen the Constitution of Texas kicked around in the last three days here. No football ever got kicked around anywhere any worse. This Senate has overstepped its rights and privileges in taking any action of this character, since the vote was taken on Charge 21, last Saturday afternoon. This Senate can not write a judgment. Talking to me, without my being a lawyer, without my caring for lawyers or anything else, but as a plain student of the English language, a plain student of the Constitution of this State; talking to me about this Senate writing a judgment! The judgment against James E. Ferguson was written in the Constitution forty-two years ago in the city of Austin, when this Constitution was adopted. All that this Senate can do is to bring in a verdict. They brought in their verdict on last Saturday, the Senators in this Chamber did, and it is a piece of burlesque, almost vaudeville, if it wasn't such a serious proposition, to hear Senators who claim to be great lawyers standing here and trying to teach men who understand the English language as well, at least, as they do, or trying to tell them what the provision of the Constitution of Texas is which provides the judgment. The Constitution provides the judgment; the Senators can't do it, and anything you have been doing today —I don't care how manifest it may be in the law books—is unauthorized by the Constitution. I know as much about the English language as the lawyers know. This thing of saying something about the Constitution of California, and about the trial of some man in 1862—

Senator Page: Mr. President, I desire to make a point of order.

The Chair: State the point of order.

Senator Page: I simply make the point of order—

Senator McNealus: I am speaking to my own point of order, Mr. President.

The Chair: The Senator from Dallas says that he is speaking to his own point of order.

Senator McNealus: I am.

Senator Page: I understand that. We are now discussing, we have under advisement here the point of order made against the amendment, and not against the judgment. He is discussing and saying that we ought not to enter any judgment at all, when we have an amendment to the judgment.

Senator McNealus: Now, Mr. President, I apologize one more time for not being a lawyer.

Senator Hudspeth: We accept the apology, Mr. President.

Senator McNealus: Whenever I get on the floor of the Senate I apologize for not being a lawyer; then I wouldn't offend people if I was a lawyer; I wouldn't be offending anybody around here for not being a lawyer. But I don't have to earn my bread and butter by the statutes; I know some lawyers who do that and do it well, and I am proud of them, and I am glad of their friendship, but I am tired of being called down by lawyers here on questions that I know as much

about as they do; that every school boy sixteen years of age ought to know. (Laughter.)

The Chair: Let us have order.

Senator McNealus: I know as much about the Constitution as any of you lawyers here do. I want to tell you that plainly, and that is no egotism, at all.

Now, the point of order that I have raised, I want to speak to in this way: This Court, this Senate, as a part of the legislative machinery of Texas, sitting as a court here, cannot even permit by the use of the word "may," that the Senator from Cooke says he uses, neither instruct nor request any other Legislature to do anything.

The Chair: The Chair will state to the Senator from Dallas that unless the Senator from Dallas desires to be heard further, that in the opinion of the Chair all three points of order are well taken.

Senator McNealus: Now, Mr. President, I have listened—

The Chair: If the Senator from Dallas desires to be listened to further, all right.

Senator McNealus: I have heard some of these Senators here today, who talked law, and never a word about this case; they talked about the statutes of California; they talked about Judge Foster of Connecticut; they talked about a case tried in 1862, two thousand miles away from here, that has no more to do with this case before this Court than the rising of the tide or the falling of the tide, not a bit, but they were heard for hours. Why? Because they had been "Deestrick" Attorneys, somewhere, or had a license to practice before the police court, or something like that. I think I might be mistaken about that—but they were listened to; and now I want to be listened to, just for a few minutes, and if I am not listened to now, you will have to listen to me when I cast my vote.

The Chair: Does the Senator from Dallas yield?

Senator McNealus: I yield.

Senator Hudspeth: A point of order.

Senator McNealus: Well, I have a point of disorder.

Senator Johnston of Harris: A point of order, Mr. President.

The Chair: State the point of order.

Senator Hudspeth: The Senator from Dallas, when he was asked by the Senator from Bexar, a while ago, if he desired to say anything, said that he did not care to punish the Senate any further.

Senator McNealus: Oh, no! I said I didn't want to punish myself; I didn't say anything about punishing the Senate. I think it ought to be punished, from the way some Senators have been acting the last few days.

Senator Johnston of Harris: Has the Chair ruled on the point of order?

The Chair: The Chair said he was ready to sustain the points of order.

Senator Johnston: With the permission of the Senator from Dallas, I would like to ask a question of information. I would like for somebody to tell me, to point to an instance where ever a jury or court paired on any question. I make the point of order that pairing here today in this Court is not permissible.

The Chair: That point of order is not prompted by anything that is pending here right now. The Chair will state the point of order was not raised when the pairs were sent up, a while ago, and the vote has been announced on the motion where the pairs were sent up.

Senator Johnston: Well, is it too late to raise my point of order?

The Chair: Yes, sir, I think so—at least while the other points are pending.

Senator Johnston: I thought you had overruled the points of order.

The Chair: Well, I have not.

Senator McNealus: Mr. President, the vote has not been announced.

The Chair: Yes, the vote has been announced; yes, sir, and the minority report was tabled.

Senator McNealus: Now, I just want to say on this point of order—and I may go outside of the limits of the point of order in the discussion—that in my opinion, we have been proceeding without any constitutional authority at all in the matter of this judgment. I think that when the vote was taken on Article 21, last Saturday night, as the presiding judge of this Court, the President of this Senate should have written the verdict into the proceedings of this Court; it should have gone into the

records of this State, and that would have ended it. I do not think it was right that this Senate should have proceeded further, or that there was any constitutional warrant for it, and no man in this Chamber could have done it; but they have done it; and in doing it, they have made a football of the Constitution of this State. All that this Court could do, under the Constitution, was to render its verdict. Section 2, Article 15, and Section 4, Article 15, makes it as clear as daylight, that is all that could possibly have been done by the Senate, and they have exceeded their authority—the Senate has, the Committee on Jurisprudence has exceeded its authority. I again refer to Section 2 and Section 4 of Article 15, and if you can find any authority in those sections of that Constitution on this matter, you can do more than I can do, and more than I believe any living man can do. The verdict is all that the Senate could render; they had no right to go further than that; and when the vote was announced on Article 21, last Saturday evening, the duty and the power of this Court was ended. Further than that, the presiding officer of this Court should have written into the permanent records of this Court what the verdict was. The judgment is right there in cold English in the Constitution, and has been there for forty-two years; put there in advance by the framers of the Constitution, and this Senate cannot render a judgment; and that is what I am objecting to, is that we can not write a judgment.

The Chair: If the Senator from Dallas will yield, that is all I can do.

Senator McNealus: I yield.

The Chair: The question of whether we can write a judgment is not raised by the points of order.

Senator McNealus: I said I was going outside of the points of order and express my views, which I declined to express this afternoon, when the Senator from Bexar was kind enough to ask me if I wanted to be heard. I am saying it now. I don't want to wear out the patience of the Senators in doing it, but I say now that in my judgment—it is written in plain, cold English, written in the Constitution, as plain as any elementary lesson in the common schools could have been written, that in my judgment, in my view, in my opinion, the Senate exceeded its authority in trying to write a judgment, because it was written forty-two years ago, in 1875, when the Constitutional Convention was held in this city, and the judgment was written there—the judgment was rendered there for a thousand years to come. If that Constitution is not changed in that provision, that judgment stands for a thousand years, or ten thousand years, if this commonwealth lasts that long, and there is no change made in that constitutional provision. All that this Senate could do, as I said before, was to render a verdict, and when we did that our work was done. The Constitution provides a judgment and penalty, and no Senator here ought to try to change the Constitution or change the penalty, no matter how much sympathy you may feel for James E. Ferguson. He has made his own bed. He has the same Constitution to govern him that governs me, and governs these pages and these porters, these black men; and had they done anything one-hundredth part as bad as he has done, they would have been convicted and no mercy would have been asked for them. No need of asking for mercy for the Chief Executive of this State, when it is not shown against the lowest grafters and the commonest malefactors against the law. I regret, I am sorry, that the Senate had to bring in the verdict that it did. I am sorry that it had to apply to him the judgment of the Constitution, but it had to be done, and now to try to make some kind of a compromise; to try to compromise and amend the Constitution here, is something that is absolutely not understandable to my mind.

The Chair: The points of order are sustained; the question is on the adoption of the majority report.

Senator Bailey: Mr. President.

Senator Hudspeth: Mr. President.

The Chair: The Senator from El Paso.

Senator Hudspeth: I asked for a division; I believe the Chair will give me a division of the question.

Senator Bailey: Will the Senator yield for me to offer an amendment?

Senator Hudspeth: In a moment. I will state in all candor that while I voted to convict the Respondent and remove him from office, I did not vote to convict him on the altar of

prejudice and public opinion. I want to say now, Mr. President, that while I realize that I am going to be forced to vote for this majority report, unless the Chair gives me a division, that I shall at all times set my face against this proposition, that you must crucify a man because he is found guilty. I want to say to you, sir, in all candor, to follow the doctrine that has been announced here this afternoon, you had just as well take down the red, white and blue and place in its form a human tiger, you had just as well, Mr. President, if you propose to crucify this man here, and deny him the right to go before the people, to disfranchise him under a misguided construction, as I view it, of the Constitution of this State, you had just as well take down from the dome of this Capitol the emblem of justice and mercy, and place in its stead the twisted form of a hag from hell! I say I have a right, Mr. President, to a division on this question. I should not be forced to vote for this judgment against my conscience. I stood here against my friends, I cut off from the moorings of my party and voted my convictions on last Saturday, to vote for the conviction of this man, but I did not at that time intend to vote to forever disfranchise him from holding office in this State. I shall be forced, unless I get a division of this question, to vote against my conscience in this matter, because I realize, Mr. President, a judgment must be entered here, and if a majority of the Senate of this State wants by their vote here to force me to vote against my conscience, in entering up a judgment here, I shall do it; but I want to serve notice now that I am being forced to cast the vote here on account of the public opinion that is sweeping this State, and I say it ought not to be done. No man, Mr. President, ought to be forced, in order to render a verdict, in order to render a judgment, to vote against the dictates of his conscience. I do not believe the framers of this Constitution, as has been explained by the Senator from Cooke, intended that it should be mandatory, I shall never believe it. Tell me, a man who has committed an inferior crime shall be visited with the harsh punishment that is visited upon a man who has committed a heinous crime; I will never believe that the framers of this Constitution intended to write into the organic law any such harsh provision. Why, my conscience tells me that the Respondent is guilty of the charges I voted him guilty on, and he ought to be removed from office, as I said on a former occasion, I would rather be under six feet of Mother Earth today than to have a judgment written against me of that kind and character. For that reason, Mr. President, I think that the Chair ought to give the men here who do not stand for this harsh punishment a division of this question. But if you gentlemen force it on me, it looks to me like I will have to reverse my judgment upon a question that has divided this Senate; if you want to force me to do it, I will do it, because I realize that a judgment must be entered here against James E. Ferguson. But I will never give my consent if I never hold another office in this State, and I don't care if I never hold one, if I am forced to prostitute my convictions here, I say to you in all candor—to you men here—that you ought not to force men when their consciences tell them they are violating them to banish this man forever from Texas politics. I say it ought not to be done, and I ask you, as my friend (to the Chair), and, as a man, I would be glad to vote for you for any office, I ask you, Mr. President, for a division of this question.

The Chair: The Senator from DeWitt has an amendment which he desires to offer.

Senator Bailey: Mr. President, I offer the following amendment.

Senator Bee: Let us have order.

The Chair: The Senator from DeWitt offers the following amendment.

Senator Bailey: Is the committee report—the committee report before the Senate, as I understand it, susceptible of amendment?

The Chair: Yes, sir, I think so, of course, if the amendment is in order. The Senator from DeWitt sends up the following amendment; the Secretary will read the amendment.

(The Secretary thereupon read the amendment, as follows, to wit):

"Amend the majority report by erasing the period after the words 'State of Texas' in the first sentence of the judgment on the last page of the same, and adding the words 'for a term of five years from this date,' and placing a period thereafter."

Senator Bailey: Now, Mr. President and Senators, I am not going to speak long to this amendment; I am simply going to say that if there is a Senator here who believes as I do, that the Constitution gives him the right to limit this penalty, variable as it is, and wants to extend mercy and charity to a man that is down and out, to give to him opportunity to vote. The Constitution says he shall be disqualified from holding any office of trust or honor or profit, and stops. Nowhere there does it say forever. Now, let us take that rule that we have all quoted here so often, which says that the Senate —the Legislature can do anything the Constitution does not in express terms inhibit. I say to you that in my opinion you can vote for this amendment, and if you can do it, Senators, let me say that I think you ought to. I move the adoption of the amendment.

The Chair: The question is on the adoption of the amendment.

Senator Dayton: Does the Senator from DeWitt yield?

Senator Bailey: Yes, sir.

The Chair: Does the Senator from DeWitt yield to the Senator from Cooke?

Senator Bailey: Yes, sir, I yield.

Senator Dayton: I think the Senate ought to consider this amendment. I doubt if it is a judgment without that. Didn't the Senate in the Bates case, when the defendant was convicted, proceed to pronounce the following judgment: "He was thereupon convicted and was sentenced to perpetual disqualification from holding office." And didn't the Senate in the Hardy case pronounce this judgment: "The sentence is simply a removal from office." In other words, when the statute does not say, "That he shall be, forever disqualified," isn't it necessary in this judgment to make some limit?

Senator Bailey: I think so.

The Chair: The question is upon the adoption of this amendment.

Senator Suiter: Mr. President.

The Chair: Senator Suiter.

Senator Suiter: Believing as I do that the Constitution means exactly what it says and that the only judgment that could be entered is in the Constitutional language, and that is removal and disqualification from holding office as stated therein, I move to table the amendment as offered by the Senator from DeWitt.

The Chair: The Senator from Wood moves to table the amendment.

Senator Bailey: The "ayes" and "noes."

The Chair: The "ayes" and "noes" are called for. Those who are in favor of the motion will answer "aye" as their names are called; those opposed will answer "no."

(The Secretary thereupon called the roll, as follows, to wit):

The Secretary: Alderdice.
Senator Alderdice: "Aye."
The Secretary: Bailey.
Senator Bailey: "No."
The Secretary: Bee.
Senator Bee: Mr. President, I doubt very much the constitutional authority for this amendment, but I believe that under the circumstances I shall resolve my doubts in favor of its constitutionality and vote "no."
The Secretary: Buchanan of Bell.
Senator Buchanan: "Aye."
The Secretary: Buchanan of Scurry.
Senator Buchanan: "Aye."
The Secretary: Caldwell.
Senator Caldwell: "Aye."
The Secretary: Clark.
Senator Clark: "No."
The Secretary: Collins.
Senator Collins: "Aye."
The Secretary: Dayton.
Senator Dayton: "No."
The Secretary: Dean.
Senator Dean: "Aye."
The Secretary: Decherd.
Senator Decherd: "Aye."
The Secretary: Floyd.
Senator Floyd: "Aye."
The Secretary: Gibson.
Senator Gibson: "Aye."
The Secretary: Hall. (Absent.)
The Secretary: Harley.
Senator Harley: "No."
The Secretary: Henderson. (Absent.)
The Secretary: Hopkins.
Senator Hopkins: "No."
The Secretary: Hudspeth.
Senator Hudspeth: Mr. President, like stated by the Senator from Bexar, I doubt very seriously, whether, after reading the provisions of the Constitution, we can limit this holding of office for any specific time. My construction is that the removal from office is for all time to come, is per-

mament; but in order that this punishment, this removal from office—in order that the people of Texas, if we have made a mistake—I don't think we have—in convicting this man and removing him from office, but if we have, the last tribunal a man can take his case to, the people of Texas, may have an opportunity to pass on this question if it be we have made a mistake. I shall vote "no."

The Secretary: Johnson of Hall.

Senator Johnson: Mr. President, I again offer to pair with the Senator from Wharton. I do not know whether it is a proper practice in this case or not, but I want to keep faith with him.

Senator Johnston of Harris: Mr. President.

The Chair: The Senator from Harris.

Senator Johnston: I don't care anything about it particularly, but I think a pairing in Court is not permissible. I raise the point of order.

Senator Clark: Mr. President, in regard to that point of order, it has been argued here all day that the Senate could do as they pleased.

Senator Johnston: If the Senator will yield—

Senator Clark: Wait until I get through, Senator. I have heard the Constitution discussed pro and con so much, I have come to the conclusion that there is not a man in here that knows anything about the Constitution, and I think the Senators can do as they please; they have always paired here, and I think a pair is perfectly legitimate.

Senator Johnston: Will the Senator yield?

Senator Clark: I yield.

Senator Johnston: We are not sitting as the Senate now, but as a Court.

Senator Clark: Well, they have argued, Senator—

Senator Johnston: Well, the arguments don't amount to anything.

Senator Clark: This is the Senate acting now, I do not think it is permissible, it has never been raised before, but some men are always ready to split a hair.

Senator Hudspeth: Mr. President.

The Chair: The Senator from El Paso.

Senator Hudspeth: I want to state, Mr. President, that on the vote for United States Senator, I ought to state to my good friend from Harris, that the Senator from Eastland was not voting and I paired with him (addressing Senator Johnston) on that very vote.

Senator Johnston: Yes, sir, but you were in the Senate, Senator, not in the Court.

Senator Hudspeth: I understand.

Senator Johnston: Who ever heard of the pairing of a jury or the pairing of a court?

Senator Hudspeth: Well, I was voting for you.

Senator Johnston: You were in the Senate, not in a court. The point I am making is this, that this is a court.

Senator Hudspeth: We kept a record of it, Senator.

Senator Johnston: It doesn't make any difference. I say this is a court. Who ever heard of a juryman in a box pairing on a question, or who ever heard of a court pairing? If I am wrong, I would like some enlightened lawyer to tell me. I am just making the point that I do not think pairing is permissible.

Senator Page: Mr. President, does the Senator from Harris yield?

The Chair: Does the Senator from Harris yield to the Senator from Bastrop?

Senator Johnston: Yes, sir.

Senator Page: I submit that there is no necessity for it, the jurymen are all in the box. No character of verdict could be entered if any of those men were absent. We are sitting here not as a jury, Senator, but as members of a quasi court, and I appeal to the Senator to withdraw his point of order, there is nothing to be accomplished by it. The only thing is to allow these Senators to go on record. I suggest to the Senator to withdraw it.

Senator Johnston: I don't think it is a good precedent, but I don't care anything about it.

Senator Bailey: Mr. President.

The Chair: The point of order is withdrawn. The Senator from DeWitt?

Senator Bailey: I was just simply going to address myself to the point of order.

The Chair: The point of order is withdrawn.

The Secretary (Resuming the calling of the roll): Johnston of Harris.

The Chair: It is on the motion to table.

Senator Johnston: Oh, I vote "aye."
The Secretary: Lattimore.
Senator Lattimore: "Aye."
The Secretary: McCollum. (Absent.)
The Secretary: McNealus.
Senator McNealus: "Aye."
The Secretary: Page.
Senator Page: "No."
The Secretary: Parr.
Senator Parr: "No."
The Secretary: Robbins.
Senator Robbins: "Aye."
The Secretary: Smith.
Senator Smith: "Aye."
The Secretary: Strickland.
Senator Strickland: "Aye."
The Secretary: Suiter.
Senator Suiter: "Aye."
The Secretary: Westbrook.
Senator Westbrook: "Aye."
The Secretary: Woodward.
Senator Woodward: "No."

Senator Henderson: Mr. President, I desire to vote "aye."

The Chair: The Senator from Morris votes "aye."

Senator Bee: Mr. President, the Senator from Henderson is paired with Senator McCollum. Mr. President, I will state that Senator McCollum called me up over the telephone and said it was impossible for him to be here, and he was exceedingly anxious that I leave no effort undone to have him paired, and I have such a very high respect for the Senator from McLennan that I hate to have him not paired.

Senator Robbins: I will state to the Senator from Bexar, Mr. President, that I paired with the Senator from McLennan on the main point. I could not forecast, I could not tell anything about the number of amendments to be offered. If you have authority of the Senator from McLennan to pair on all votes, I will be glad to pair with him.

Senator Bee: I will state to the Senator from Henderson, in answer to that question, that the Senator from McLennan asked me to pair him on all questions that arose in this matter, as I would vote. That is the request that he made. I would be glad for the Senator from Henderson to pair with him, in order that I may keep faith with him.

Senator Hudspeth: Doesn't the Senator from Bexar think that it is a very dangerous practice to vote as you do, on all questions?

Senator Bee: On these questions.

The Chair: The Senator from Henderson does not vote, but sends up the following pair.

Senator Bee: I appreciate, Mr. President, his action.

The Chair: The Secretary will tabulate the result.

Senator McNealus: I call for a verification of the votes, Mr. President.

The Chair: Verification of the vote is called for.

The Secretary: Those voting "aye":

Alderdice, Buchanan of Bell, Buchanan of Scurry, Caldwell, Collins, Dean, Decherd, Floyd, Gibson, Henderson, Johnston of Harris, Lattimort, McNealus, Smith, Strickland, Suiter, Westbrook.

Those voting "no":

Bailey, Bee, Clark, Dayton, Harley, Hopkins, Hudspeth, Page, Parr, Woodward.

Paired, Hall and Johnson of Hall; McCollum and Robbins.

Seventeen "ayes," ten "noes," two pairs.

The Chair: There being seventeen "ayes," ten "noes" and two pairs, the motion to table prevails. The question now is on the majority report. The Senator from El Paso requests a division of the question.

Senator Hudspeth: Yes, sir, I asked that.

The Chair: Now, the Chair will state to the Senator from El Paso, that in the opinion of the Chair the question has already been divided, the vote on the majority report divided the question, and the Senate has already voted on that; and in the opinion of the Chair the question is on the adoption of the majority report.

Senator Hudspeth: I think, with all due deference to the Chair, any Senator has the right to ask for a division of it.

The Chair: Well, the Chair—

Senator Hudspeth: If the Chair, of course, does not think it is susceptible of division, why, the Senator from El Paso will never appeal from the opinion of the Chair.

The Chair: The Chair thought it was susceptible of division, but it has been divided already, in the opinion of the Chair, and it is not further susceptible of division again. That is the opinion of the Chair.

Senator Hudspeth: Yes, sir.

The Chair: The question is on the adoption of the majority report.

Senator Bee: "Ayes" and "noes."

Senator Page: "Ayes" and "noes."

The Chair: The "ayes" and "noes" are called for.

Senator Collins: Mr. President, this is on the majority report?

The Chair: Yes, sir. The Secretary will call the roll.

(The Secretary thereupon called the roll, as follows):

The Secretary: Alderdice.
Senator Alderdice: "Aye."
The Secretary: Bailey.
Senator Bailey: "Aye."
The Secretary: Bee.
Senator Bee: "Aye."
The Secretary: Buchanan of Bell.
Senator Buchanan: "Aye."
The Secretary: Buchanan of Scurry.
Senator Buchanan: "Aye."
The Secretary: Caldwell.
Senator Caldwell: "Aye."
The Secretary: Clark.
Senator Clark: "No."
The Secretary: Collins.
Senator Collins: "Aye."
The Secretary: Dayton.
Senator Dayton: "Aye."
The Secretary: Dean.
Senator Dean: "Aye."
The Secretary: Decherd.
Senator Decherd: "Aye."
The Secretary: Floyd.
Senator Floyd: "Aye."
The Secretary: Gibson.
Senator Gibson: "Aye."
The Secretary: Hall. (Absent.)
The Secretary: Harley.
Senator Harley: "Aye."
The Secretary: Henderson.
Senator Henderson: "Aye."
The Secretary: Hopkins.
Senator Hopkins: "Aye."
The Secretary: Hudspeth.

Senator Hudspeth: Mr. President, I vote "Aye" for the reasons stated in my rambling remarks of a few minutes ago.

The Secretary: Johnson of Hall.

Senator Johnson: Mr. President, I am paired with the Senator from Wharton. I vote "aye." If he were present he would vote "no." Does any one know how he would vote?

Senator Clark: Yes, sir, I told you I had his written notice. I showed you his written notice; he told me to pair him just like I voted, and you know how I voted.

Senator Johnson: All right.

The Secretary: Johnston of Harris.

Senator Johnston: "Aye."
The Secretary: Lattimore.
Senator Lattimore: "Aye."
The Secretary: McCollum. (Absent.)
The Secretary: McNealus.

Senator McNealus: Mr. President, while I consider all that has been done since Saturday evening irregular, I want it to go on record in harmony with my actions of last week, and I am compelled to vote "aye."

The Chair: The gentleman votes "aye."

The Secretary: Page.
Senator Page: "Aye."
The Secretary: Parr.
Senator Parr: "No."
The Secretary: Robbins.
Senator Robbins: "Aye."
The Secretary: Smith.
Senator Smith: "Aye."
The Secretary: Strickland.
Senator Strickland: "Aye."
The Secretary: Suiter.
Senator Suiter: "Aye."
The Secretary: Westbrook.
Senator Westbrook: "Aye."
The Secretary: Woodward.
Senator Woodward: "No."

The Secretary: Twenty-five "ayes," three "noes" and one pair.

The Chair: There being twenty-five "ayes" and three "noes," one pair and one absent, the majority report is adopted.

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: Mr. President, I move that the Court of Impeachment report its action to the Senate and adjourn sine die.

The Chair: The Senator from DeWitt moves—

Senator Hudspeth: I will ask the Senator from DeWitt—I notice it was done in the McGaughey case, that a motion was made that the Secretary be instructed to file a copy of the judgment with the Secretary of State.

Senator Bailey: I think the judgment provides that.

The Chair: The Senator from DeWitt moves that the Court of Impeachment adjourn sine die.

Senator Bailey: And report its progress to the Senate.

The Chair: And report its progress to the Senate. Those in favor of the motion, let it be known by

saying "aye," those opposed "no." The "ayes" have it.

(Thereupon, at 5:27 o'clock p. m., Tuesday, September 25, 1917, the High Court of Impeachment adjourned sine die.)

In the Senate.

(President Pro Tem. Dean in the chair at 5:30 o'clock p. m.)

Bill Signed.

The Chair, President Pro Tem. Dean, gave notice of signing and did sign in the presence of the Senate, after its caption had been read the following bill:

H. B. No. 28, A bill to be entitled "An Act to create a more efficient road system for Trinity County, Texas, etc., and declaring an emergency."

Messages from the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with several messages from the Governor.

The Chair directed the Secretary to read the messages, which were as follows:

Governor's Office,
Austin, Texas, Sept. 25, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I submit for the consideration of your honorable body the following subjects:

1. Enactment of an Act to amend Chapter 5 of the Acts of the Thirty-fifth Legislature, at the First Called Session, making an appropriation for the military forces of the State and for the Adjutant General's Department, and amending this act so as to provide an appropriation of $400,000 instead of $750,000.

2. Enactment of an Act to amend Chapter 36 of the Acts of the Thirty-fifth Legislature, at the first called session, providing for the Ranger Home Guard; and to amend same by making an appropriation of $150,000 instead of $250,000.

After an investigation made by me through the Adjutant General's department, I have reached the conclusion that the amounts appropriated in the Acts mentioned can be reduced as indicated above without impairing the efficiency of the service; and as a further step to avoid a deficiency in the State Treasury, I recommend that these acts be amended.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Governor's Office,
Austin, Texas, Sept. 25, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I submit for the consideration of your honorable body the following:

Enactment of an Act to further define the powers and duties of the State Normal School Board of Regents, as set forth in Chapter 191 of the Acts of the Regular Session of the Thirty-fifth Legislature, providing for the establishment, maintenance and government of two State normal colleges, and as set forth in Chapter 197, Acts of the Regular Session of the Thirty-fifth Legislature, providing for the establishment, maintenance and government of a State normal school at Alpine, Texas; providing that the duties imposed upon the said State Normal School Board of Regents by the provisions of these acts may be further defined by providing that said Board shall be authorized to construct and have ready for occupancy one of these normal colleges not later than September 1, 1919, one by September 1, 1920, and one by September 1, 1922.

In obedience to the request of a large number of the members of your body, I have taken under consideration the matter of amending or repealing the laws creating these institutions. After an investigation of the steps taken by the State Normal School Board of Regents as authorized by the Legislature, it is my judgment that these laws can not be repealed if due regard for the obligations of the State is taken into consideration.

I accompany this message with a statement from the State Normal School Board of Regents, who were authorized under the law to locate and establish these colleges; and it will be seen from this report that such progress has been made in the acceptance of sites which were donated by the several towns and cities which were candidates for the location of these schools, as to commit

the State to the building and completion of same. I, therefore, suggest that the Treasury of the State may be relieved by the building of one of these institutions at intervals of two years; which will at the same time provide for carrying out these contracts authorized by the Legislature.

After a full and free discussion among the members of the State Normal School Board of Regents, the plan of building these colleges at the periods stated was approved as the best method of relieving a threatened deficiency in the Treasury and also carry out the contracts as entered into by the Board.

I am accompanying this message also with the endorsement of such a plan by the State Normal School Board of Regents.

At my request there has been prepared by the Attorney General's Department, jointly with Hon. Leonard Tillotson, Representative from Austin County, a bill further defining the powers and duties of the Regents which, in my judgment, will accomplish the best results under the circumstances.

Respectfully submitted,

W. P. HOBBY,
Acting Governor of Texas.

Austin, Texas, Sept. 24, 1917.

Honorable W. P. Hobby,
Governor of Texas.
Austin, Texas.

Dear Sir:

As requested in your letter of the 22nd inst. we give you as follows the status with regard to the three Normal Schools at Nacogdoches, Kingsville, and Alpine, as provided for by the Thirty-fifth Legislature:

(1) Stephen F. Austin Normal at Nacogdoches:

After canvassing the territory east of the 96th meridian, and duly considering the propositions made to the Board by the several towns and cities which were candidates for the location of this school, the Board bearing in mind the limitations surrounding its action and conditions in the law providing for the creation of said school concluded that the Stephen F. Austin Normal College should be located at Nacogdoches.

The citizenship of that city has complied with all of the requirements of the law and with the exactions of the Board respecting the location of the school there. A tract of land containing 205 acres and conveniently located for the successful maintenance and operation of the school has been conveyed to the State, and they have carried out all promises and conditions set forth in their formal application on file with this Board asking for the location of said school, a copy of which application is hereto attached and marked "Exhibit A" and made a part hereof. The deed conveying said land to the State has been executed and delivered to the President of this Board, and the abstract of title to said property has been delivered to the Attorney General, and by him examined and is now being perfected in accordance with his opinion. The architects for the proposed building have been selected, plans and specifications therefor are being prepared, the architects and building committee for this Board have visited the site and caused to be prepared contour maps, and location of the buildings on the site have been designated.

In brief, all of the details preliminary to the construction of the buildings have been performed within the time and in the manner provided for in the bill creating said school.

(2) South Texas State Normal, Kingsville, Texas.

This Board visited the territory south of the twenty-ninth parallel within which the South Texas Normal College was to be located as provided for in the law, and after carefully and personally investigating the merits of the several applicants, and the propositions submitted by the citizens of such communities, the Board deemed it their duty to locate the South Texas Normal College at Kingsville, and the proposition submitted by the citizens of that town, as amended by certain exactions of the Board, has been in all things complied with. Their original proposition containing their offer is hereto attached and marked "Exhibit B," and made a part hereof.

The site for the school, and the agricultural farm, containing 150 acres and 225 acres respectively have been by good and sufficient deeds conveyed to the State, title thereto has been examined and approved by the Attorney General. The sewerage system of the town of Kingsville has been extended to the building site, and every promise and condition of

our contract with the citizens of Kingsville has been in all things complied with.

The statement made with respect to the selection of architects, and preparation of the plans and specifications with reference to the Stephen F. Austin Normal College, is also true with respect to the normal to be located at Kingsville.

(3) The Sul Ross State Normal, Alpine, Texas:

It will be remembered that this normal was created by a Special Act of the Thirty-fifth Legislature, and located at Alpine, conditioned upon the citizenship of that community making certain provisions for its location and maintenance. This Board being directed by the law to pass upon the question of site only.

The action of this Board with respect to the Normal to be located at Alpine is set forth in the resolution passed by the Board at its meeting held in Austin on August 9, 1917, a copy of which resolution is hereto attached, and marked "Exhibit C," and made a part hereof.

In undertaking to comply with the conditions set forth in said resolution, the citizens of Alpine have begun the drilling of a well for water, and we understand that said well has now reached a depth of 130 feet, according to the latest report received by this Board. The matter of perfecting the title to the original 100 acres of land has been approved by the Attorney General, and deed executed and delivered. Deeds to a portion of the additional lots required by the Board have been obtained and delivered, and effort is being made to acquire title to the additional lots.

It will be observed that a bond was required of the citizens of Alpine guaranteeing the performance of all the conditions precedent to the location of the school at Alpine, same being in the principal sum of $50,000 This bond has not yet been furnished the Board as requested, same having been drawn by the Attorney General only recently, but it is our understanding that said bond will be forthcoming.

Respectfully submitted,
(Signed):

A. C. Goeth, President,
M. O. Flowers,
A. B. Martin,
Walter J. Crawford,
Robt. J. Eckhardt.

State Normal School Board of Regents.

(Copy.)

Austin, Texas, Sept. 25, 1917.

Governor W. P. Hobby, Austin, Texas.

My Dear Governor: Referring further to your inquiry as to the status with regard to the three new normal colleges to be established, namely the South Texas Normal College at Kingsville, the Stephen F. Austin State Normal College at Nacogdoches and the Sul Ross Normal College at Alpine, we beg leave to state that the general plan as outlined in the bill proposed by the Hon. Leonard Tillotson is satisfactory to this board, as the best method of carrying out the contracts entered into by this board. Very truly yours,

A. C. GOETH,
President State Normal School Board of Regents.

Bills and Resolutions.

(By unanimous consent.)

By Senators Robbins, Smith, Suiter, Floyd and Buchanan of Bell:

S. B. No. 41, A bill to be entitled "An Act to repeal Chapter 197 of the General Laws of Texas passed at the Regular Session of the Thirty-fifth Legislature, same being an Act to provide for the establishment, maintenance and government of the State Normal College to be located at Alpine, Brewster County, Texas, to be known as the 'Sul Ross Normal College,' and declaring an emergency."

Read first time and referred to Committee on Educational Affairs.

By Senators Robbins, Smith, Suiter, Floyd and Buchanan of Bell:

S. B. No. 42, A bill to be entitled "An Act to repeal Chapter 191 of the General Laws of Texas passed at the Regular Session of the Thirty-fifth Legislature, same being 'An Act to provide for the establishment, maintenance and government of two State Normal Colleges; providing for the location of same,' and declaring an emergency."

Read first time and referred to the the Committee on Educational Affairs.

Simple Resolution No. 26.

Be it resolved by the Senate of Texas, That the judgment rendered by this Senate while sitting as a Court of Impeachment be ratified

and that the officers of the Senate be directed to execute the mandates of said judgment.

LATTIMORE.

The resolution was read and, on motion of Senator Lattimore, the same was adopted by the following vote:

Yeas—23.

Alderdice.	Hopkins.
Bailey.	Johnson of Hall.
Bee.	Johnston of Harris.
Buchanan of Bell.	Lattimore.
Buchanan of Scurry.	McNealus.
Collins.	Page.
Dayton.	Robbins.
Dean.	Smith.
Floyd.	Strickland.
Gibson.	Suiter.
Harley.	Westbrook.
Henderson.	

Nays—2.

Clark.	Parr.

Absent.

Caldwell.	Hudspeth.
Decherd.	McCollum.
Hall.	Woodward.

Adjournment.

At 5:50 o'clock p. m., Senator Buchanan of Scurry moved that the Senate adjourn until 10 o'clock tomorrow morning.

The motion prevailed.

APPENDIX.

Petitions and Memorials.

Senator Smith offered a numerously signed petition from citizens of Rusk County, setting forth reasons why certain schools created by the Regular Session of this Legislature should be repealed.

Committee Reports.

(Floor Report.)

Senate Chamber,
Austin, Texas, Sept. 25, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 32, A bill to be entitled "An Act to make an emergency appropriation to repair the North Texas Hospital buildings for the Insane at Terrell and to construct and equip a sewage disposal plant at said hospital for the insane,"

Have had the same under consideration and beg leave to report it back to the Senate with the recommendation that it do pass and be not printed.

Caldwell, Vice Chairman; Page, Johnson, Parr, Decherd, Westbrook, Johnston of Harris, Collins, Clark, Hopkins, Bee, Dean.

(Floor Report.)

Senate Chamber,
Austin, Texas, Sept. 24, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 23, A bill to be entitled "An Act to amend Section 1 of Chapter 123, p. 320 of the General Laws of the Thirty-fifth Legislature at its regular session so as to provide that said Act shall not apply to any Act permitted by the Statutes of the United States of America, or by the United States Army and Navy Regulations nor be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag or flags, disconnected from any advertisement, and declaring an emergency."

Have had the same under consideration and beg leave to report the same back with the recommendation that it do pass and be not printed.

Page, Chairman; Caldwell, Hudspeth, Strickland, Suiter, Lattimore, Dayton.

Committee Room,
Austin, Texas, Sept. 24, 1917.

Honorable W. L. Dean, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

H. B. No. 51, A bill to be entitled "An Act to repeal Chapter 204 of the General Laws passed at the Regular Session of the Thirty-fifth Legislature, the same being an Act establishing a

Junior Agricultural College east of the 96th meridian and north of the 31st parallel, and declaring an emergency,"

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass and be not printed.

BEE, Chairman.

(Majority Report.)

Committee Room,
Austin, Texas, Sept. 24, 1917.

Honorable W. L. Dean, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

H. B. No. 50, A bill to be entitled "An Act to repeal Chapter 29 of the General Laws of Texas passed at the Regular Session of the Thirty-fifth Legislature, the same being an Act establishing the West Texas Agricultural and Mechanical College, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass and be not printed.

BEE, Chairman.

(Minority Report.)

Committee Room,
Austin, Texas, Sept. 24, 1917.

Honorable W. L. Dean, President of the Senate.

Sir: We, the minority of your Committee on Education, to whom was referred

H. B. No. 50, A bill to be entitled "An Act to repeal Chapter 29 of the General Laws of Texas passed at the Regular Session of the Thirty-fifth Legislature, the same being 'An Act establishing the West Texas Agricultural and Mechanical College, and declaring an emergency'," Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do not pass.

BUCHANAN of Scurry,
LATTIMORE.

(Floor Report.)

Senate Chamber,
Austin, Texas, Sept. 24, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Stock and Stock Raising, to whom was referred

H. B. No. 24, A bill to be entitled "An Act to amend Article 6233, Chapter 6, Title 124, Revised Civil Statutes of Texas, 1911, as amended by Chapter 62, General Laws of the Thirty-third Legislature, and Chapters 26 and 99, General Laws of the Thirty-fourth Legislature, and Chapter 131, General Laws of the Thirty-fifth Legislature, with reference to the mode of preventing horses and certain other animals from running at large in the counties named so as to include Madison County, and declaring an emergency,"

Have had same under consideration and beg to report it back to the Senate with the recommendation that it do pass and be not printed.

Clark, Chairman; Johnson, Collins, Parr, Dean, Buchanan of Bell.

Committee Room,
Austin, Texas, Sept. 25, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Educational Affairs, to whom was referred

H. B. No. 40, A bill to be entitled "An Act to establish and incorporate the Pinkerton Independent School District with certain boundaries in Haskell County, Texas, with all the powers and privileges of independent school districts to manage and control the public schools of same, to elect trustees therefor, to levy and collect taxes for the maintenance of said school; to issue bonds and declaring an emergency,"

Have had the same under consideration, and beg to report it back to the Senate, with the recommendation that it do pass, and be not printed.

BEE, Chairman.

Committee Room,
Austin, Texas, Sept. 25, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committe on Educational Affairs, to whom was referred

H. B. No. 39, A bill to be entitled "An Act to establish and incorporate the Whitman Independent School District with certain boundaries in Haskell County, Texas, with all the powers and privileges of independent school districts to manage and control the public schools of same, to elect trustees therefor, to levy and collect taxes for the maintenance of

said school, to issue bonds and declaring an emergency,"

Have had the same under consideration, and beg to report it back to the Senate, with the recommendation that it do pass, and be not printed.

BEE, Chairman.

TWENTIETH DAY.

Senate Chamber,
Austin, Texas,
Wednesday, Sept. 26, 1917.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

Alderdice.	Hopkins.
Bee.	Hudspeth.
Buchanan of Bell.	Johnson of Hall.
Buchanan of Scurry.	Johnston of Harris.
Caldwell.	Lattimore.
Clark.	McNealus.
Collins.	Page.
Dayton.	Parr.
Dean.	Robbins.
Decherd.	Smith.
Floyd.	Strickland.
Harley.	Suiter.
Henderson.	Westbrook.

Absent.

Bailey.	McCollum.
Gibson.	Woodward.
Hall.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with, on motion of Senator Alderdice.

Petitions and Memorials.

There were none today.

Committee Reports.

See Appendix.

Bills and Resolutions.

By Senator Henderson:

S. B. No. 43, A bill to be entitled "An Act to amend Chapter 204, page 467, Acts of the Regular Session of the Thirty-fifth Legislature, relating to agricultural college east of the ninety-sixth meridian and north of the thirty-first parallel," etc.

Read first time and referred to Committee on Educational Affairs.

By Senator Caldwell:

S. B. No. 44, A bill to be entitled "An Act to provide that the General Land Office, the Agricultural Department and such other departments and offices of the State government as may be from time to time determined by the Governor and Superintendent of Public Buildings and Grounds shall occupy the new departmental building now being erected in the city of Austin at the corner of Brazos and East Eleventh streets, repealing all laws and parts of laws in conflict herewith, and declaring an emergency."

Read first time and referred to Committee on Public Buildings and Grounds.

Simple Resolution No. 27.

Whereas, The Hon. F. O. Fuller, Speaker of the House of Representatives, made an affidavit that he did not vote to locate the new A. & M. College at Abilene; and,

Whereas, The said F. O. Fuller swore on the stand in the House of Representatives that he did not vote for the location of said A. & M. College at Abilene; and,

Whereas, The said F. O. Fuller preferred a charge against James E. Ferguson in the House of Representatives, namely, that the said James E. Ferguson did try to bribe the said F. O. Fuller by loaning him five hundred dollars; and,

Whereas, The Board of Managers evidently did not believe him, as they did not prefer said charges; and,

Whereas, It is the sense of the Senate and the public at large, from the evidence introduced in the House of Representatives before the Committee of the House as a Whole, that the said F. O. Fuller did vote for the location of the said A. & M. College, to be located at Abilene, and thereby perjured himself; therefore be it

Resolved, That the Senate hereby asks the House to expel the said F. O. Fuller from the Legislature, as a perjuror should not be a member of the Texas Legislature.

CLARK.